

MONTANA LEGISLATIVE HISTORY

Chapter 528 19 95

Bill H 540 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Feb 14 ☒ C

Feb 16 ☒ C

_____ ☐ C

_____ ☐ C

Date Out Feb 17 ☒ C

S. Committee on Judiciary

Hearing Date(s) Mar 27 ☒ C

Mar 28 ☒ C

_____ ☐ C

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Mar 28 ☒ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

Appropriations
Mar 10
Mar 21
Mar 22

	SENATE		
4/05	FREE CONFERENCE COMMITTEE APPOINTED		
4/08	FREE CONFERENCE COMMITTEE REPORT NO. 1		
4/10	2ND READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	46	3
4/11	3RD READING FREE CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	40	7
4/13	SIGNED BY SPEAKER		
4/13	SIGNED BY PRESIDENT		
4/13	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 480		
	EFFECTIVE DATE: 10/01/95		

HB 538 INTRODUCED BY EWER, ET AL.

PROVIDE A CITIZEN THE PRIVATE RIGHT OF ACTION TO COMPEL
COMPLIANCE WITH WATER QUALITY STATUTES

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO NATURAL RESOURCES		
2/15	HEARING		
2/17	TABLED IN COMMITTEE		
2/23	MISSED TRANSMITTAL DEADLINE DIED IN COMMITTEE		

HB 539 INTRODUCED BY SOFT, ET AL.

AMEND THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO HUMAN SERVICES & AGING		
2/14	FISCAL NOTE REQUESTED		
2/15	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	FISCAL NOTE PRINTED		
2/20	2ND READING PASSED AS AMENDED	88	12
2/22	3RD READING PASSED	84	14
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
3/13	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/25	2ND READING CONCURRED	41	7
3/27	3RD READING CONCURRED	42	7
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	86	14
4/04	3RD READING AMENDMENTS CONCURRED	76	23
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 439		
	EFFECTIVE DATE: 10/01/95		

HB 540 INTRODUCED BY MOLNAR

GENERALLY REVISE THE MONTANA YOUTH COURT ACT

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO JUDICIARY		

2/14	HEARING		
2/14	FISCAL NOTE REQUESTED		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	FISCAL NOTE RECEIVED		
2/20	FISCAL NOTE PRINTED		
2/20	2ND READING PASSED AS AMENDED	57	42
2/22	TAKEN FROM 3RD READING AND REREFERRED TO APPROPRIATIONS		
3/08	REVISED FISCAL NOTE PRINTED, AS AMENDED BY THE JUDICIARY COMMITTEE		
3/10	HEARING		
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	72	27
3/23	3RD READING PASSED	74	25
	TRANSMITTED TO SENATE		
3/24	FIRST READING		
3/24	REFERRED TO JUDICIARY		
3/27	HEARING		
3/28	COMMITTEE REPORT—BILL CONCURRED		
3/29	2ND READING CONCURRED	31	18
3/30	3RD READING CONCURRED	32	18
	RETURNED TO HOUSE		
4/03	REVISED FISCAL NOTE RECEIVED		
4/03	SIGNED BY SPEAKER		
4/04	SIGNED BY PRESIDENT		
4/05	TRANSMITTED TO GOVERNOR		
4/08	REVISED FISCAL NOTE PRINTED		
	RETURNED TO HOUSE WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	98	1
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	73	26
	SENATE		
4/12	2ND READING GOVERNOR'S AMENDMENTS CONCURRED	49	0
4/13	3RD READING GOVERNOR'S AMENDMENTS CONCURRED	46	4
4/18	SIGNED BY SPEAKER		
4/18	SIGNED BY PRESIDENT		
4/18	TRANSMITTED TO GOVERNOR		
4/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 528		
	EFFECTIVE DATE: 10/01/95		

HB 541 INTRODUCED BY WENNEMAR, ET AL.
REDUCE SIZE OF CERTAIN PIPELINES THAT ARE SUBJECT TO THE
MONTANA MAJOR FACILITY SITING ACT

2/13	INTRODUCED		
2/13	FIRST READING		
2/13	REFERRED TO NATURAL RESOURCES		
2/14	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
2/22	MISSED TRANSMITTAL DEADLINE DIED IN COMMITTEE		

HB 542 INTRODUCED BY TASH, ET AL.
CREATE THE MONTANA PUBLIC HEALTH IMPROVEMENT TASK FORCE

2/13	INTRODUCED		
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House BILL NO. 540

INTRODUCED BY Brad Molnar

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT; AMENDING SECTIONS 7-32-2244, 39-71-117, 39-71-118, 39-71-774, 40-6-233, 41-3-102, 41-5-102, 41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206, 41-5-301, 41-5-304, 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521, 41-5-522, 41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802, 41-5-810, 41-5-811, 41-5-812, 41-5-1001, 41-5-1004, 52-5-129, 53-21-162, AND 53-21-506, MCA; AND REPEALING SECTIONS 41-5-106, 41-5-310, 41-5-311, AND 41-5-809, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-32-2244, MCA, is amended to read:

"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-307, and 41-5-309, and 41-5-311."

Section 2. Section 39-71-117, MCA, is amended to read:

"39-71-117. Employer defined. (1) "Employer" means:

- (a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee ~~thereof~~ of the deceased employer;
- (b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and
- (c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in

1 39-71-118~~(1)(f)~~(1)(e), with nonprofit organizations or associations or federal, state, or local government
2 entities.

3 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
4 experience purposes.

5 (3) An employer defined in subsection (1) who utilizes the services of a worker furnished by
6 another person, association, contractor, firm, or corporation, other than a temporary service contractor,
7 is presumed to be the employer for workers' compensation premium and loss experience purposes for work
8 performed by the worker. The presumption may be rebutted by substantial credible evidence of the
9 following:

10 (a) the person, association, contractor, firm, or corporation, other than a temporary service
11 contractor, furnishing the services of a worker to another retains control over all aspects of the work
12 performed by the worker, both at the inception of employment and during all phases of the work; and

13 (b) the person, association, contractor, firm, or corporation, other than a temporary service
14 contractor, furnishing the services of a worker to another has obtained workers' compensation insurance
15 for the worker in Montana both at the inception of employment and during all phases of the work
16 performed.

17 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract
18 motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is
19 liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

20 (a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);
21 or

22 (b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a
23 motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception
24 of employment and during all phases of the work performed."
25

26 **Section 3.** Section 39-71-744, MCA, is amended to read:

27 **"39-71-744. Benefits not due while claimant is incarcerated -- exceptions.** (1) Except as provided
28 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the
29 claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana
30 women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical

benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118~~(1)(f)~~ (1)(e)."

Section 4. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

~~(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;~~

~~(c)~~ a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

~~(d)~~(c) students enrolled and in attendance in programs of vocational-technical education at

1 designated vocational-technical centers;

2 ~~(e)(d)~~ an aircrew member or other person employed as a volunteer under 67-2-105;

3 ~~(f)(e)~~ a person, ~~other than a juvenile as defined in subsection (1)(b)~~, performing community service
4 for a nonprofit organization or association or for a federal, state, or local government entity under a court
5 order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under
6 appointment or contract of hire with an employer as defined in this chapter and whether or not receiving
7 payment from a third party. For a person covered by the definition in this subsection ~~(f)(1)(e)~~:

8 (i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an
9 impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39,
10 chapter 3, part 4, for a full-time employee at the time of the injury; and

11 (ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon
12 the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community
13 service required under the order from the court or hearings officer.

14 ~~(g)(f)~~ an inmate working in a federally certified prison industries program authorized under
15 53-1-301.

16 (2) The terms defined in subsection (1) do not include a person who is:

17 (a) participating in recreational activity and who at the time is relieved of and is not performing
18 prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket,
19 permit, device, or other emolument of employment; or

20 (b) performing voluntary service at a recreational facility and who receives no compensation for
21 those services other than meals, lodging, or the use of the recreational facilities.

22 (3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of
23 a fire company organized and funded by a county, a rural fire district, or a fire service area.

24 (4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as
25 an employee within the provisions of this chapter any member of the partnership or the owner of the sole
26 proprietorship devoting full time to the partnership or proprietorship business.

27 (b) In the event of an election, the employer must serve upon the employer's insurer written notice
28 naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired
29 by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner
30 or sole proprietor is not considered an employee within this chapter until notice has been given.

1 (c) A change in elected wages must be in writing and is effective at the start of the next quarter
2 following notification.

3 (d) All weekly compensation benefits must be based on the amount of elected wages, subject to
4 the minimum and maximum limitations of this subsection. For premium ratemaking and for the
5 determination of weekly wage for weekly compensation benefits, the electing employer may elect not less
6 than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

7 (5) The trustees of a rural fire district, a county governing body providing rural fire protection, or
8 the county commissioners or trustees for a fire service area may elect to include as an employee within the
9 provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'
10 compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

11 (6) An employee or worker in this state whose services are furnished by a person, association,
12 contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in
13 39-71-117 is presumed to be under the control and employment of the employer. This presumption may
14 be rebutted as provided in 39-71-117(3).

15 (7) For purposes of this section, an "employee or worker in this state" means:

16 (a) a resident of Montana who is employed by an employer and whose employment duties are
17 primarily carried out or controlled within this state;

18 (b) a nonresident of Montana whose principal employment duties are conducted within this state
19 on a regular basis for an employer;

20 (c) a nonresident employee of an employer from another state engaged in the construction industry,
21 as defined in 39-71-116, within this state; or

22 (d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose
23 employer elects coverage with an insurer that allows an election for an employer whose:

24 (i) nonresident employees are hired in Montana;

25 (ii) nonresident employees' wages are paid in Montana;

26 (iii) nonresident employees are supervised in Montana; and

27 (iv) business records are maintained in Montana.

28 (8) An insurer may require coverage for all nonresident employees of a Montana employer who do
29 not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under
30 subsection (7)(d)."

1 **Section 5.** Section 40-6-233, MCA, is amended to read:

2 **"40-6-233. Remedy for parental abuse.** The abuse of parental authority is the subject of judicial
3 cognizance in a civil action brought by the child or by its relative within the third degree or by the county
4 commissioners of the county where the child resides. When the abuse is established, the child may be freed
5 from the dominion of the parent and the duty of support and education enforced. A parent or guardian of
6 a child has the right to give the child or force the child to take prescribed medicine, and exercise of the right
7 is not an abuse of parental authority."

8
9 **Section 6.** Section 41-3-102, MCA, is amended to read:

10 **"41-3-102. Definitions.** As used in this chapter, the following definitions apply:

11 (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent;
12 a staff person providing care in a day-care facility; an employee of a public or private residential institution,
13 facility, home, or agency; or any other person legally responsible for the child's welfare in a residential
14 setting.

15 (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse
16 or neglect.

17 (3) (a) "Adequate health care" means any medical care, including the prevention of the withholding
18 of medically indicated treatment or medically indicated psychological care permitted or authorized under
19 state law.

20 (b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse
21 or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a
22 child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of
23 the state to ensure that medical care is provided to the child when there is imminent or substantial risk of
24 harm to the child.

25 (4) "Child" or "youth" means any person under 18 years of age.

26 (5) (a) "Child abuse or neglect" means:

27 (i) harm to a child's health or welfare, as defined in subsection (8); or

28 (ii) threatened harm to a child's health or welfare, as defined in subsection (15).

29 (b) The term includes harm or threatened harm to a child's health or welfare by the acts or
30 omissions of a person responsible for the child's welfare.

(c) The term does not include what appears to be an extreme reaction to extreme circumstances, such as self defense or defense of others, action taken to prevent the child from self harm, or normal physical punishment or normal physical consequences of one's actions.

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, ~~shelter~~, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or

1 psychological functioning.

2 (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any
3 bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a
4 bodily organ or function sustained as a result of excessive corporal punishment.

5 (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
6 indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

7 (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a
8 prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging
9 sexual abuse of children as described in 45-5-625.

10 (14) "Social worker" means an employee of the department whose duties generally involve the
11 provision of either child or adult protective services, or both.

12 (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's
13 health or welfare.

14 (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's
15 life-threatening conditions by providing treatment {including appropriate nutrition, hydration, and
16 medication}, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely
17 to be effective in ameliorating or correcting the conditions. However, the term does not include the failure
18 to provide treatment {other than appropriate nutrition, hydration, or medication}, to an infant when, in the
19 treating physician's or physicians' reasonable medical judgment:

20 (a) the infant is chronically and irreversibly comatose;

21 (b) the provision of treatment would:

22 (i) merely prolong dying;

23 (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

24 (iii) otherwise be futile in terms of the survival of the infant; or

25 (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the
26 treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant"
27 means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously
28 hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The
29 reference to less than 1 year of age may not be construed to imply that treatment should be changed or
30 discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available

under state laws regarding medical neglect of children over 1 year of age.

(17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

Section 7. Section 41-5-102, MCA, is amended to read:

"41-5-102. Declaration of purpose. The Montana Youth Court Act ~~shall~~ must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to ~~remove from youth committing violations of the law the element of retribution and to substitute therefor~~ prevent and reduce youth delinquency through immediate, consistent, enforceable, and avoidable consequences of youths' actions and to establish a program of supervision, care, rehabilitation, detention, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights."

Section 8. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed ~~an offense that, if committed by an adult, would constitute~~ a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(8) "Department" means the department of family services provided for in 2-15-2401.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(10) "Detention facility" means a shelter care facility or a physically restricting facility designed to prevent a youth from departing at will and approved by the board of county commissioners of the county in which the facility is located. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a private residence licensed by the department for placement of a youth.

(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Holdover" means a room, office, building, or other place approved by the board of ~~crime control~~ county commissioners of the county in which the holdover is located for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest.

(16) "Judge", when used without further qualification, means the judge of the youth court.

1 (17) (a) "Legal custody" means the legal status created by order of a court of competent
2 jurisdiction that gives a person the right and duty to:

3 (i) have physical custody of the youth;

4 (ii) determine with whom the youth shall live and for what period;

5 (iii) protect, train, and discipline the youth; and

6 (iv) provide the youth with food, shelter, education, and ordinary medical care.

7 (b) An individual granted legal custody of a youth shall personally exercise ~~his~~ the rights and duties
8 as guardian unless otherwise authorized by the court entering the order.

9 (18) "Necessary parties" includes the youth, ~~his~~ and the youth's parents, guardian, custodian, or
10 spouse.

11 (19) "Parent" means the natural or adoptive parent but does not include a person whose parental
12 rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless
13 ~~his~~ paternity is established by an adjudication or by other clear and convincing proof.

14 (20) "Probable cause hearing" means the hearing provided for in 41-5-303.

15 (21) "Regional detention facility" means a youth detention facility established and maintained by
16 two or more counties, as authorized in 41-5-811, and approved by the board of county commissioners of
17 each county.

18 (22) "Restitution" means payments in cash to the victim or with services to the victim or the
19 general community when these payments are made pursuant to an informal adjustment, consent decree,
20 or other youth court order.

21 (23) "Secure detention facility" means any public or private facility that is approved by the board
22 of county commissioners of the county in which it is located and that:

23 (a) is used for the temporary placement of youth or individuals accused or convicted of criminal
24 offenses; and

25 (b) is ~~designed~~ to physically restrict the movements and activities of youth or other individuals held
26 in lawful custody of the facility.

27 (24) "Serious juvenile offender" means a youth who has committed ~~an offense that would be~~
28 ~~considered~~ a felony offense ~~if committed by an adult and that is an offense against a person, an offense~~
29 ~~against~~ or property, or an offense involving dangerous drugs.

30 (25) "Shelter care" means the temporary substitute care of youth in physically unrestricting

1 facilities.

2 (26) "Shelter care facility" means a facility approved by the board of county commissioners of the
3 county in which it is located and used for the shelter care of youth. The term is limited to the facilities
4 enumerated in 41-5-306(1).

5 (27) "Short-term detention center" means a detention facility ~~licensed by the department~~ approved
6 by the board of county commissioners of the county in which the detention center is located for the
7 temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause
8 hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.

9 (28) "State youth correctional facility" means a residential facility used for the placement and
10 rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school
11 in Helena.

12 (29) "Substitute care" means full-time care of youth in a residential setting for the purpose of
13 providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who
14 are removed from or are without the care and supervision of their parents or guardian.

15 (30) "Youth" means an individual who is less than 18 years of age without regard to sex or
16 emancipation.

17 (31) "Youth court" means the court established pursuant to this chapter to hear all proceedings
18 in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of
19 care and includes the youth court judge and probation officers.

20 (32) "Youth detention facility" means a secure detention facility ~~licensed by the department~~
21 approved by the board of county commissioners of the county in which the detention facility is located for
22 the temporary substitute care of youth that:

23 (a) is operated, administered, and staffed separately and independently of a jail; and

24 (b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.

25 (33) "Youth in need of care" has the meaning provided for in 41-3-102.

26 (34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that,
27 if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

28 (a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

29 (b) continues to exhibit behavior beyond the control of ~~his~~ the youth's parents, foster parents,
30 physical custodian, or guardian despite the attempt of ~~his~~ the parents, foster parents, physical custodian,

1 or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

2 (c) has committed any of the acts of a delinquent youth but whom the youth court, in its
3 discretion, chooses to regard as a youth in need of supervision."

4
5 **Section 9.** Section 41-5-203, MCA, is amended to read:

6 **"41-5-203. Jurisdiction of the court courts.** (1) ~~Except as provided in subsection (2), the~~ The court
7 has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth
8 is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care ~~or concerning~~
9 ~~any person under 21 years of age charged with having violated any law of the state or ordinance of any~~
10 ~~city or town other than a traffic or fish and game law prior to having become 18 years of age.~~

11 (2) Justice, municipal, ~~and city, and district~~ courts have ~~concurrent~~ jurisdiction ~~with the youth court~~
12 ~~over all alcoholic beverage and gambling violations alleged to have been committed by a youth a person~~
13 under 21 years of age who is charged with a violation of any state criminal or other law or municipal
14 ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them
15 jurisdiction over the violation charged."

16
17 **Section 10.** Section 41-5-204, MCA, is amended to read:

18 **"41-5-204. Venue and transfer.** (1) The county where a youth is a resident or is alleged to have
19 violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court
20 shall assume the initial handling of the case.

21 (2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a
22 youth in need of supervision or a youth in need of care. The youth court of that county shall assume the
23 initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

- 24 (a) the county in which the youth is apprehended or found;
25 (b) the county in which the youth is alleged to have violated the law; or
26 (c) the county of residence of the youth's parents or guardian.

27 (3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care,
28 a change of venue may be ordered at any time by the concurrence of the youth court judges of both
29 counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

30 ~~(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses~~

1 ~~listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing~~
2 ~~court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district~~
3 ~~court of the county where the offense occurred."~~

4
5 **Section 11.** Section 41-5-205, MCA, is amended to read:

6 **"41-5-205. Retention of jurisdiction.** Once a court obtains jurisdiction over a youth, the court
7 retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

8 ~~(1) at the time the proceedings are transferred to adult criminal court;~~

9 ~~(2)(1) at the time the youth is discharged by the department; and~~

10 (2) at the time the youth is transferred to the department of corrections and human services; and

11 (3) in any event, at the time the youth reaches the age of 21 years."

12
13 **Section 12.** Section 41-5-206, MCA, is amended to read:

14 **"41-5-206. Transfer to criminal court.** ~~(1) After a petition has been filed alleging delinquency, the~~
15 ~~court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter~~
16 ~~of prosecution to the district court if:~~

17 ~~(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be~~
18 ~~unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503,~~
19 ~~deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the~~
20 ~~attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been~~
21 ~~committed by an adult; or~~

22 ~~(iii) the youth charged was 16 years of age or more at the time of the conduct alleged to be~~
23 ~~unlawful and the unlawful act is one or more of the following:~~

24 ~~(A) negligent homicide as defined in 45-5-104;~~

25 ~~(B) arson as defined in 45-6-103;~~

26 ~~(C) aggravated or felony assault as defined in 45-5-202;~~

27 ~~(D) robbery as defined in 45-5-401;~~

28 ~~(E) burglary or aggravated burglary as defined in 45-6-204;~~

29 ~~(F) aggravated kidnapping as defined in 45-5-303;~~

30 ~~(G) possession of explosives as defined in 45-8-335;~~

1 ~~(H) criminal sale of dangerous drugs as defined in 45-9-101;~~

2 ~~(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;~~

3 ~~(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)~~
4 ~~through (1)(a)(iii)(I);~~

5 ~~(b) a hearing on whether the transfer should be made is held in conformity with the rules on a~~
6 ~~hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court~~
7 ~~without a jury;~~

8 ~~(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his~~
9 ~~counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and~~

10 ~~(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe~~
11 ~~that:~~

12 ~~(i) the youth committed the delinquent act alleged;~~

13 ~~(ii) the seriousness of the offense and the protection of the community require treatment of the~~
14 ~~youth beyond that afforded by juvenile facilities; and~~

15 ~~(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.~~

16 ~~(2) In transferring the matter of prosecution to the district court, the court may also consider the~~
17 ~~following factors:~~

18 ~~(a) the sophistication and maturity of the youth, determined by consideration of the youth's home,~~
19 ~~environmental situation, and emotional attitude and pattern of living;~~

20 ~~(b) the record and previous history of the youth, including previous contacts with the youth court,~~
21 ~~law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior~~
22 ~~commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not~~
23 ~~of itself be grounds for denying the transfer.~~

24 ~~(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time~~
25 ~~of the conduct alleged to be unlawful and the unlawful act would constitute is deliberate homicide as~~
26 ~~defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in~~
27 ~~45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.~~

28 ~~(4) Upon transfer to district court, the judge shall make written findings of the reasons why the~~
29 ~~jurisdiction of the youth court was waived and the case transferred to district court.~~

30 ~~(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the~~

1 acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense
2 originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in
3 this section.

4 (6) ~~Upon order of the youth court transferring the case to the district court, the county attorney~~
5 ~~shall file the information against the youth without unreasonable delay.~~

6 (7) ~~Any offense not enumerated in subsection (1) that arises during the commission of a crime~~
7 ~~enumerated in subsection (1) may be:~~

8 ~~(a) tried in youth court;~~

9 ~~(b) transferred to district court with an offense enumerated in subsection (1); upon motion of the~~
10 ~~county attorney and order of the youth court judge.~~

11 (8) ~~If a youth is found guilty in district court of any of the offenses transferred by the youth court~~
12 ~~and is sentenced to the state prison, the commitment must be to the department of corrections and human~~
13 ~~services. The department shall confine the youth in whatever institution it considers proper, including a~~
14 ~~state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of~~
15 ~~age may be confined in the state prison.~~

16 (1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be
17 handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth
18 to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other
19 appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.

20 (b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or
21 other proceeding as provided in subsection (1)(a).

22 ~~(9)(2) A youth whose case is transferred to district court who is charged with a crime may not be~~
23 ~~detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition~~
24 ~~of his the case unless:~~

25 (a) alternative facilities do not provide adequate security; and

26 (b) the youth is kept in an area that provides physical, ~~as well as sight and sound,~~ separation from
27 adults accused or convicted of criminal offenses."

28
29 **Section 13.** Section 41-5-201, MCA, is amended to read:

30 **"41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information

1 from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent
2 youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the
3 terms ~~thereof~~ of an order, a probation officer shall make a preliminary inquiry into the matter.

4 (2) The probation officer may:

5 (a) require the presence of any person relevant to the inquiry;

6 (b) request subpoenas from the judge to accomplish this purpose;

7 (c) require investigation of the matter by any law enforcement agency or any other appropriate
8 state or local agency.

9 (3) If the probation officer determines that the facts indicate a youth in need of care, the matter
10 ~~shall~~ must be immediately referred to the department.

11 (4) (a) The probation officer in the conduct of the preliminary inquiry shall:

12 (i) advise the youth of the youth's rights under this chapter and the constitutions of the state of
13 Montana and the United States;

14 (ii) determine whether the matter is within the jurisdiction of the court;

15 (iii) determine, if the youth is in detention or shelter care, whether ~~such~~ the detention or shelter
16 care should be continued based upon criteria set forth in 41-5-305.

17 (b) Once relevant information is secured, the probation officer shall:

18 (i) determine whether the interest of the public or the youth requires that further action be taken;

19 (ii) terminate the inquiry upon the determination that no further action be taken; and

20 (iii) release the youth immediately upon the determination that the filing of a petition is not
21 authorized.

22 (5) The probation officer upon determining that further action is required may:

23 (a) provide counseling, refer the youth and ~~his~~ the youth's parents to another agency providing
24 appropriate services, or take any other action or make any informal adjustment that does not involve
25 probation, ~~or detention, treatment, or a placement~~;

26 (b) provide for treatment or adjustment involving probation or other disposition authorized under
27 41-5-401 through 41-5-403, provided ~~such~~ the treatment or adjustment is voluntarily accepted by the
28 youth's parents or guardian and the youth, and provided further that ~~said~~ the matter is referred immediately
29 to the county attorney for review and that the probation officer proceed no further unless authorized by
30 the county attorney or a youth placement committee, whichever is appropriate; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.

(6) The county attorney may either:

(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by ~~such~~ evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(b) file a complaint or other proceeding under 41-5-206.

(7) A petition, complaint, or other proceeding charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or ~~the petition shall be dismissed and~~ the youth must be released unless good cause is shown to further detain ~~such~~ the youth.

(8) If ~~no~~ a petition, complaint, or other proceeding is not filed under this section, the complainant and victim, if any, ~~shall~~ must be informed by the probation officer of the action and the reasons ~~therefor~~ for the action and ~~shall~~ must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition, complaint, or other proceeding ~~shall be is to be~~ filed."

Section 14. Section 41-5-304, MCA, is amended to read:

"41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for ~~conduct alleged to be unlawful that would be a felony if committed by an adult;~~

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged ~~would constitute~~ is a felony ~~if the act had been committed by an adult.~~

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other

1 investigation."

2
3 **Section 15.** Section 41-5-305, MCA, is amended to read:

4 **"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.**

5 (1) A youth may not be placed in a secure detention facility unless:

6 (a) ~~he the youth~~ has allegedly committed ~~an act that if committed by an adult would constitute a~~
7 ~~criminal offense and the alleged offense is one~~ specified in 41-5-206;

8 (b) ~~he the youth~~ is alleged to be a delinquent youth and:

9 (i) ~~he the youth~~ has escaped from a shelter care facility, correctional facility, or secure detention
10 facility;

11 (ii) ~~he the youth~~ has violated a valid court order or an aftercare agreement;

12 (iii) ~~his the youth's~~ detention is required to protect persons or property;

13 (iv) ~~he the youth~~ has pending court or administrative action or is awaiting a transfer to another
14 jurisdiction and may abscond or be removed from the jurisdiction of the court;

15 (v) there are not adequate assurances that ~~he the youth~~ will appear for court when required; or

16 (vi) ~~he the youth~~ meets additional criteria for secure detention established by the youth court in
17 the judicial district that has current jurisdiction ~~over him~~; or

18 (c) ~~he the youth~~ has been adjudicated delinquent and is awaiting final disposition of ~~his the~~ case.

19 (2) A youth may not be placed in a shelter care facility unless:

20 (a) the youth and ~~his the youth's~~ family need shelter care to address their problematic situation
21 when it is not possible for the youth to remain at home;

22 (b) the youth needs to be protected from physical or emotional harm;

23 (c) the youth needs to be deterred or prevented from immediate repetition of ~~his the~~ troubling
24 behavior;

25 (d) shelter care is necessary to assess the youth and ~~his the youth's~~ environment;

26 (e) shelter care is necessary to provide adequate time for case planning and disposition; or

27 (f) shelter care is necessary to intervene in a crisis situation and provide intensive services or
28 attention that might alleviate the problem and reunite the family."

29
30 **Section 16.** Section 41-5-306, MCA, is amended to read:

1 **"41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in
2 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

- 3 (a) in a licensed youth foster home as defined in 41-3-1102;
4 (b) in a facility operated by a licensed child welfare agency;
5 (c) in a licensed youth group home as defined in 41-3-1102; or
6 (d) under home arrest, either in the youth's own home or in one of the facilities described in
7 subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

8 (2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in
9 subsection (1), must be segregated from juvenile offenders, and may not be placed in a jail or other facility
10 intended or used for the confinement of adults accused or convicted of criminal offenses.

11 (3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent
12 youth may be placed only in:

- 13 (a) the facilities described in subsection (1);
14 (b) under home arrest as provided in subsection (1);
15 (c) a short-term detention center; or
16 (d) a youth detention facility."

17
18 **Section 17.** Section 41-5-307, MCA, is amended to read:

19 **"41-5-307. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable
20 grounds, that a youth can be released to a person who has custody of the youth, then the peace officer
21 may release the youth to that person upon receiving a written promise from the person to bring the youth
22 before the probation officer at a time and place specified in the written promise, or a peace officer may
23 release the youth under any other reasonable circumstances.

24 (2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained,
25 the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide
26 the probation officer with a written report of ~~his~~ the reasons for holding the youth in detention. If it is
27 necessary to hold the youth pending appearance before the youth court, then the youth must be held in
28 a place of detention approved by the ~~youth court~~ board of county commissioners. If the peace officer
29 believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately
30 and shall provide a written report of ~~his~~ the reasons for placing the youth in shelter care. If the youth is

1 then held, the youth must be placed in a shelter care facility approved by the ~~youth court~~ board of county
2 commissioners."

3
4 **Section 18.** Section 41-5-313, MCA, is amended to read:

5 **"41-5-313. Permitted acts -- detention of youth in law enforcement facilities -- criteria.** ~~(1) Nothing~~
6 ~~in this~~ This chapter precludes does not include the detention of youth in a police station or other law
7 enforcement facility that is attached to or part of a jail if:

8 ~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office,~~
9 ~~interrogation room, or other area that is not designated or used as a secure detention area or that is not~~
10 ~~part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~
11 ~~such as a booking room;~~

12 ~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of~~
13 ~~detention;~~

14 ~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification,~~
15 ~~processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

16 ~~(d) the area is not designed or intended to be used for residential purposes; and~~

17 ~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff~~
18 ~~during the period of time that the youth is held in detention.~~

19 ~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement~~
20 ~~of adults accused or convicted of criminal offenses in a physically restricting setting, including but not~~
21 ~~limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at~~
22 ~~will."~~

23
24 **Section 19.** Section 41-5-401, MCA, is amended to read:

25 **"41-5-401. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer
26 may enter into an informal adjustment and give counsel and advice to the youth and other interested parties
27 if it appears:

28 (a) the admitted facts bring the case within the jurisdiction of the court;

29 (b) counsel and advice without filing a petition would be in the best interests of the ~~child~~ youth,
30 the youth's family, and the public; and

(c) the youth may be a youth in need of supervision and if the probation officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment ~~shall~~ must be reduced to writing and signed by the youth and ~~his~~ the youth's parents or the person having legal custody of the youth.

(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(d) If a placement of the youth is made, it must be by the youth placement committee pursuant to 41-5-526 and 41-5-527."

Section 20. Section 41-5-403, MCA, is amended to read:

"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians for youth's care. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and as determined by the department;

(c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth as determined by the department;

(d) restitution upon approval of the youth court judge;

(e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

1 (b) ability of the youth to pay;

2 (c) ability of ~~the parents or legal guardian~~ persons contributing to the youth's delinquency or need
3 for supervision to pay;

4 (d) amount of damage to the victim; and

5 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
6 insurer to stand any loss may not be considered in any case.

7 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ the youth must
8 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
9 facility under informal adjustment.

10 (4) If the youth is placed in substitute care requiring payment by the department, the court shall
11 examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part
12 of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical,
13 dental, and other health care.

14 (5) If the court determines that the youth's parents or guardians are financially able to pay a
15 contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an
16 amount based on the uniform child support guidelines adopted by the department of social and rehabilitation
17 services pursuant to 40-5-209.

18 (6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each
19 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,
20 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is
21 nevertheless subject to withholding for the payment of the contribution without need for an amendment
22 of the support order or for any further action by the court.

23 (b) A court-ordered exception from contributions under this section must be in writing and be
24 included in the order. An exception from the immediate income withholding requirement may be granted
25 if the court finds there is:

26 (i) good cause not to require immediate income withholding; or

27 (ii) an alternative arrangement between the department and the person who is ordered to pay
28 contributions.

29 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be
30 based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 21. Section 41-5-514, MCA, is amended to read:

"41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; ~~and~~

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence; and

(4) the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 22. Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, ~~his~~ or the youth's parent, guardian, or attorney may demand a jury trial on ~~such~~ the contested offenses. In the absence of ~~such~~ a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing ~~shall~~ must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing ~~shall~~ must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The petition and affidavits may not contain allegations against the youth or other persons unless they have been admitted or proven.

(3) An adjudicatory hearing ~~shall~~ must be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."

Section 23. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The

1 dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians
2 to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

3 (2) Before conducting the dispositional hearing, the court shall direct that a social summary or
4 predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family,
5 ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition
6 of the case. The youth court may have the youth examined, and the results of the examination ~~shall~~ must
7 be made available to the court as part of the social summary or predisposition report. The court may order
8 the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the
9 court. The results of ~~such~~ the examination ~~shall~~ must be included in the social summary or predisposition
10 report. The youth, ~~his~~ or the youth's parents, guardian, or counsel ~~shall have~~ has the right to subpoena all
11 persons who have prepared any portion of the social summary or predisposition report and ~~shall have~~ has
12 the right to cross-examine ~~said~~ the parties at the dispositional hearing.

13 (3) Defense counsel ~~shall~~ must be furnished with a copy of the social summary or predisposition
14 report and psychological report prior to the dispositional hearing.

15 (4) The dispositional hearing ~~shall~~ must be conducted in the manner set forth in subsections (3),
16 (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best
17 serving the interests of the youth and the public. ~~Such~~ The evidence ~~shall~~ must include but is not ~~be~~ limited
18 to the social summary and predisposition report provided for in subsection (2) of this section.

19 (5) If the court finds that it is in the best interest of the youth, the youth, ~~his~~ or the youth's
20 parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the
21 issues of need for treatment and rehabilitation.

22 (6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular
23 case, the following factors may be considered in addition to any other evidence:

24 (a) age of the youth;

25 (b) ability of the youth to pay;

26 (c) ability of ~~the parents or legal guardian~~ those that contributed to the youth's delinquency or need
27 for supervision to pay;

28 (d) amount of damage to the victim; and

29 (e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's
30 insurer to stand any loss may not be considered in any case."

1 **Section 24.** Section 41-5-523, MCA, is amended to read:

2 **"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth --**
3 **restrictions.** (1) ~~If Except as provided in subsection (15),~~ if a youth is found to be a delinquent youth or a
4 youth in need of supervision, the youth court may enter its judgment making any of the following
5 dispositions:

6 (a) place the youth on probation;

7 (b) commit the youth to the department if the court determines that the youth is in need of
8 placement in other than the youth's own home, provided that:

9 (i) the court shall determine whether continuation in the home would be contrary to the welfare
10 of the youth, the youth's family, and the community and whether reasonable efforts have been made to
11 prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a
12 determination in the order committing the youth to the department.

13 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile
14 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge
15 finds that the placement is necessary for the protection of the public. The court may order the department
16 to notify the court within 5 working days before the proposed release of a youth from a youth correctional
17 facility. Once a youth is committed to the department for placement in a state youth correctional facility,
18 the department is responsible for determining an appropriate date of release into an appropriate placement.

19 (c) order restitution by the youth or the youth's parents;

20 (d) impose a fine as authorized by law if the violation alleged ~~would constitute~~ is a criminal offense
21 ~~if committed by an adult~~;

22 (e) require the performance of community service;

23 (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the
24 youth to receive counseling services;

25 (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians,
26 or the persons having legal custody of the youth;

27 (h) require the parents, guardians, or other persons having legal custody of the youth to furnish
28 services the court may designate;

29 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the
30 youth, the youth's family, and the community and that does not obligate funding from the department

1 without the department's approval, except that a youth may not be placed by a youth court in a residential
2 treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place
3 a youth in a residential treatment facility.

4 (j) commit the youth to a mental health facility if, based upon the testimony of a professional
5 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in
6 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth
7 adjudicated ~~mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~
8 ~~youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental~~
9 ~~disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or~~
10 ~~unable to conform the youth's behavior to the requirements of law~~ after placement by the department in
11 a state youth correctional facility must be moved to a more appropriate placement in response to the
12 youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

13 (k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

14 (2) When a youth is committed to the department, the department shall determine the appropriate
15 placement and rehabilitation program for the youth after considering the recommendations made under
16 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

17 (a) ~~A youth in need of supervision or adjudicated delinquent for commission of an act that would~~
18 ~~not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

19 ~~(b)~~ A youth may not be held in a state youth correctional facility for a period of time in excess of
20 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or
21 offenses that brought the youth under the jurisdiction of the youth court. ~~Nothing in this~~ This section ~~limits~~
22 does not limit the power of the department to enter into an aftercare agreement with the youth pursuant
23 to 52-5-126.

24 ~~(e)(b)~~ A youth may ~~not~~ be placed in or transferred to a penal institution or other facility used for
25 the execution of sentence of adults convicted of crimes.

26 (3) A youth placed by the department in a state youth correctional facility or other facility or
27 program operated by the department or who signs an aftercare agreement under 52-5-126 must be
28 supervised by the department. A youth who is placed in any other placement by the department, the youth
29 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the
30 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to

1 the department. Supervision by the youth probation officer includes but is not limited to:

2 (a) submitting information and documentation necessary for the person, committee, or team that
3 is making the placement recommendation to determine an appropriate placement for the youth;

4 (b) securing approval for payment of special education costs from the youth's school district of
5 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

6 (c) submitting an application to a facility in which the youth may be placed; and

7 (d) case management of the youth.

8 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time
9 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in
10 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of
11 the evaluation, except as provided in subsection (5). A county may contract with the department or other
12 public or private agencies to obtain evaluation services ordered by the court.

13 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of
14 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order
15 the youth's parents to pay all or part of the cost of the evaluation.

16 (6) The youth court may not order placement or evaluation of a youth at a state youth correctional
17 facility unless the youth is found to be a delinquent youth or is alleged to have committed ~~an~~ a violent
18 felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.

19 (7) An evaluation of a youth may ~~not~~ be performed at the Montana state hospital ~~unless the youth~~
20 ~~is transferred to the district court under 41-5-206.~~

21 (8) An order of the court may be modified at any time. In the case of a youth committed to the
22 department, an order pertaining to the youth may be modified only upon notice to the department and
23 subsequent hearing.

24 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional
25 judgment copies of medical reports, social history material, education records, and any other clinical,
26 predisposition, or other reports and information pertinent to the care and treatment of the youth.

27 (10) If a youth is committed to the department, the court shall examine the financial ability of the
28 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,
29 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health
30 care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to

Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(15)(a) A misdemeanor counts as one point and a felony counts as three points. An offense that can be committed only by a person only because of age counts as one point. A youth found to have accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six points, a youth must be placed in a secure detention facility for 2 weeks, and upon accumulating nine points a youth must be placed in a secure detention facility for 30 days. The staff of the secure detention facility must be trained in and give the youth counseling. The youth must be segregated from other youth, except when working on public works projects. Each county shall establish public works projects for the youth.

(b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must be placed in a state youth correctional facility for no less than 90 days.

(c) If the court finds that a habitual offender commonly entices or assists other youth to perform illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth correctional facility for no less than 180 days.

(d) Law enforcement, educational, and social service agencies, the court, and other agencies and entities involved with a youth who is found by the court or believed by the agency or entity to be a delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for the county in which the youth resides with any information in the possession of the agency or entity that may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.

(16) If a youth who is serving time in a state youth correctional facility because the youth was found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental, emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential treatment facility, but not until after the youth has served at least one-half of the imposed detention period.

(17) Health, education, welfare, and other agencies involved with the youth shall ensure that funding for the youth follows the youth to the location in which the youth is placed and that the funding is assigned to the appropriate agency or entity.

(18) Before a youth is released from a state youth correctional facility, the department shall adopt

1 and the court shall approve a written supervision plan.

2 (19)(a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition
3 when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over
4 the youth is transferred to the department of corrections and human services, which shall make an
5 appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a
6 period of time in excess of the maximum period of imprisonment that could be imposed on an adult
7 convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.

8 (b) When a youth is transferred to the department of corrections and human services, the
9 department of family services shall transmit to the department of corrections and human services the
10 dispositional judgment, copies of medical reports, social history material, education records, and any other
11 clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

12 (c) The department of corrections and human services shall confine the youth in whatever
13 institution it considers proper, including a youth correctional facility under the procedures of 52-5-111.
14 However, a youth under 16 years of age may not be confined in the state prison."

15
16 **Section 25.** Section 41-5-526, MCA, is amended to read:

17 **"41-5-526. Duties of the youth placement committee.** A youth placement committee shall:

18 (1) review all information relevant to the placement of a youth referred or committed to the
19 department;

20 (2) consider available resources appropriate to meet the needs of the youth;

21 (3) consider the treatment recommendations of any professional person who has evaluated the
22 youth;

23 (4) recommend in writing to the department an appropriate placement for the youth, considering
24 the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate
25 for placement. A committee shall consider placement in a ~~licensed~~ facility approved by the board of county
26 commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school,
27 or with a parent, other family member, or guardian.

28 (5) review temporary and emergency placements as required under 41-5-528; and

29 (6) conduct placement reviews as requested by the department."
30

1 **Section 26.** Section 41-5-527, MCA, is amended to read:

2 **"41-5-527. Youth placement committee to submit recommendation to department -- acceptance**
3 **or rejection of recommendation by department.** (1) When a youth has been referred or committed to the
4 department for placement, the department shall notify the appropriate youth placement committee. The
5 committee shall submit in writing to the department its recommendation for placement of the youth. The
6 committee shall send a copy of the recommendation to the appropriate youth court judge.

7 (2) If Except as provided in subsection (7), if the department accepts the committee's
8 recommendation, the youth must be placed according to the recommendation.

9 (3) If the department rejects the committee's recommendation, it shall promptly notify the
10 committee in writing of the reasons for rejecting the recommendation. The department shall send a copy
11 of the notice to the appropriate youth court judge.

12 (4) After receiving a notice under subsection (3), the committee shall submit in writing to the
13 department a recommendation for an alternative placement of the youth.

14 (5) If Except as provided in subsection (7), if the department accepts the committee's
15 recommendation for alternative placement, the youth must be placed according to the recommendation.

16 (6) If the department rejects the committee's recommendation for alternative placement, the
17 department shall promptly notify the committee in writing of the reasons for rejecting the recommendation
18 and shall determine an appropriate placement for the youth. The youth must be placed as determined by
19 the department.

20 (7) A placement may not be made unless the youth court judge agrees with the placement."
21

22 **Section 27.** Section 41-5-529, MCA, is amended to read:

23 **"41-5-529. Confidentiality of youth placement committee meetings and records.** (1) Meetings of
24 a youth placement committee are closed to the public to protect a youth's right to individual privacy.

25 (2) Information presented to the committee about a youth and committee records are confidential
26 and subject to confidentiality requirements established by rule by the department. Purposeful violation of
27 the confidentiality requirements is a criminal offense and a person convicted of violating the requirements
28 shall be fined \$1,000."
29

30 **Section 28.** Section 41-5-533, MCA, is amended to read:

1 **"41-5-533. Probation revocation -- disposition.** (1) A Prior to the youth's transfer to the department
2 of corrections and human services, a youth on probation incident to an adjudication that ~~he~~ the youth is
3 a delinquent youth or a youth in need of supervision and who violates a term of ~~such~~ the probation may
4 be proceeded against in a probation revocation proceeding. A proceeding to revoke probation ~~shall~~ must
5 be done by filing in the original proceeding a petition styled "petition to revoke probation".

6 (2) Petitions to revoke probation ~~shall~~ must be screened, reviewed, and prepared in the same
7 manner and ~~shall~~ must contain the same information as petitions alleging delinquency or need of
8 supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention ~~shall~~
9 apply. The petition ~~shall~~ must state the terms of probation alleged to have been violated and the factual
10 basis for ~~such~~ the allegations.

11 (3) The standard of proof in probation revocation proceedings is the same standard used in
12 probation revocation of an adult and the hearing ~~shall~~ must be before the youth court without a jury. In all
13 other respects proceedings to revoke probation are governed by the procedures, rights, and duties
14 applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of
15 supervision. If a youth is found to have violated a term of ~~his~~ probation, the youth court may make any
16 judgment of disposition that could have been made in the original case."

17
18 **Section 29.** Section 41-5-601, MCA, is amended to read:

19 **"41-5-601. Confidentiality.** (1)(a) No Except as provided in subsection (1)(b), information ~~shall~~ may
20 not be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded
21 against as, or found to be, a youth in need of supervision.

22 (b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster
23 care, the court shall notify the school that the youth will attend of the issues and the school may refuse
24 to accept the youth as a student.

25 (2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth
26 formally charged with or proceeded against as or found to be a delinquent youth as a result of the
27 commission of any offense that would be punishable as a felony if the youth were an adult. All court
28 proceedings must be open to the public ~~with the exception of the transfer hearing specified in 41-5-206~~
29 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair
30 trial.

(3) In all cases the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of ~~any~~ a youth who for the second or subsequent time admits violating or is adjudicated as having violated ~~45-5-624 or 45-9-102~~ may a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records."

Section 30. Section 41-5-604, MCA, is amended to read:

"41-5-604. Disposition of records. (1) All youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under this chapter ~~shall~~ must be physically sealed ~~when the youth reaches the age of 18 years~~ 3 years after supervision for an offense ends. The records must be unsealed if a new offense is committed.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records ~~so~~ that are sealed shall also seal or destroy ~~such~~ the copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ may not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."

Section 31. Section 41-5-703, MCA, is amended to read:

"41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under ~~his~~ the officer's supervision. The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not placed in a detention center or facility complies with the orders of the court.

(d) perform any other functions designated by the court.

(2) A probation officer ~~shall have no power to~~ may make arrests ~~or to~~ and perform any other law enforcement ~~functions~~ function in carrying out ~~his~~ the officer's duties, ~~except that a probation officer may take including taking~~ into custody ~~any~~ a youth who violates ~~either his~~ probation or a lawful order of the court."

Section 32. Section 41-5-802, MCA, is amended to read:

"41-5-802. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility ~~must be physically unrestricting and~~ may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible like a family home.~~

(6) A shelter care facility may be operated in conjunction with a youth detention facility."

Section 33. Section 41-5-810, MCA, is amended to read:

"41-5-810. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth ~~in facilities separate from adult jails~~ and space must be found for a youth in need of detention. A youth may not be released from detention because of space problems. An arresting officer shall place the youth in a detention center.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. ~~The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

(3) Each county, ~~or regional, municipal, or state~~ detention facility ~~of any type, detention center of any type, shelter care facility, or holdover~~ must be ~~licensed~~ approved by the ~~department in accordance with rules adopted under 41-5-809~~ board of county commissioners of the county in which it is located."

Section 34. Section 41-5-811, MCA, is amended to read:

"41-5-811. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-810 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility ~~must be for a term of not less than 10 years. In addition, the contracts~~ must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary

1 expenditures for the transportation of youth to and from the facility;

2 (d) include the applicable per diem charge for the detention of youths in the facility, as well as the
3 basis for any adjustment in the charge; and

4 (e) specify the number of beds to be reserved for the use of each county participating in the
5 regional detention facility."

6
7 **Section 35.** Section 41-5-812, MCA, is amended to read:

8 **"41-5-812. Creation of regions -- requirements -- ~~limitation on number of regions~~.** (1) Counties that
9 wish to establish a regional detention facility shall form a youth detention region.

10 (2) Each youth detention region must:

11 ~~(a) be composed of contiguous counties participating in the regional detention facility; and~~

12 ~~(b) include geographical areas of the state that contain a substantial percentage of the total youth~~
13 ~~population in need of detention services, as determined by the board of crime control.~~

14 ~~(3) There may be no more than five youth detention regions established in the state at any one~~
15 ~~time."~~

16
17 **Section 36.** Section 41-5-1001, MCA, is amended to read:

18 **"41-5-1001. Definitions.** As used in this part, unless the context requires otherwise, the following
19 definitions apply:

20 (1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically
21 unrestricting setting.

22 (2) "Board" means the board of crime control provided for in 2-15-2006.

23 (3) "County" means a county, city-county consolidated government, or a youth detention region
24 created pursuant to 41-5-812.

25 (4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued
26 custody of the youth pending adjudication or final disposition of ~~his~~ the youth's case.

27 (5) "Plan" means a county plan for providing youth detention services as required in 41-5-1003.

28 (6) "Secure detention" means the detention of youth in a physically restricting facility designed to
29 prevent a youth from departing at will.

30 (7) "Youth detention service" means service for the detention of youth ~~in facilities separate from~~

adult jails. The term includes the services described in 41-5-1002."

Section 37. Section 41-5-1004, MCA, is amended to read:

"41-5-1004. Distribution of grants -- limitation of funding -- restrictions on use. (1) The board shall award grants on an equitable basis, ~~giving preference to services that will be used on a regional basis.~~

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523."

Section 38. Section 52-5-129, MCA, is amended to read:

"52-5-129. Hearing on alleged violation of aftercare agreement -- right to appeal outcome. (1) When it is alleged by an aftercare counselor that a youth has violated the terms of ~~his~~ an aftercare agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of ~~such~~ a nature that ~~he~~ the youth should be returned to the youth correctional facility from which ~~he~~ the youth was released or a different plan for treatment should be pursued by the department of family services.

(2) The youth, upon advice of an attorney, may waive ~~his~~ the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of ~~his~~ an aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against ~~him~~ the youth and the facts constituting the alleged violation;

1 (c) opportunity to be heard in person and to present witnesses and documentary evidence to
2 controvert the evidence against ~~him~~ the youth and to show that there are compelling reasons that justify
3 or mitigate the violation;

4 (d) opportunity to have the referee subpoena witnesses;

5 (e) the right to confront and cross-examine adverse witnesses;

6 (f) the right to be represented by an attorney;

7 (g) a record of the hearing; and

8 (h) notice that a written statement as to the evidence relied upon in reaching the final decision and
9 the reasons for the final decision will be provided by the referee.

10 (4) The department shall appoint a referee, who may not be an employee of the department, to
11 conduct the hearing. In the conduct of the hearing, the department may request the county attorney's
12 assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

13 (5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the
14 violation, ~~he~~ the referee shall make a recommendation to the department for the placement of the youth.
15 In making this recommendation, the referee may consider mitigating circumstances. Final approval rests
16 with the department and must be made within 10 days of the referee's recommendation.

17 (6) The youth may appeal from the decision at the hearing to the district court of the county in
18 which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the
19 department's decision. The youth may obtain a written transcript of the hearing from the department by
20 giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the
21 department to promptly certify to the court a record of all proceedings before the department and shall
22 proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the
23 department may not be altered except for abuse of discretion or manifest injustice.

24 (7) Pending the hearing on a violation and pending the department's decision, a youth may not be
25 detained except when ~~his~~ detention or care is required to protect the person or property of the youth or of
26 others or ~~he~~ when the youth may abscond or be removed from the community. The department shall
27 determine the place and manner of detention and is responsible for the cost of the detention. Procedures
28 for taking into custody and detention of a youth charged with violation of ~~his~~ an aftercare agreement are
29 as provided in 41-5-303, 41-5-306, ~~41-5-311~~, and 41-5-314.

30 (8) If the decision is made to return the youth to the youth correctional facility from which ~~he~~ the

1 youth was released and the youth appeals that decision, ~~he~~ the youth shall await the outcome of the appeal
2 at the facility."

3
4 **Section 39.** Section 53-21-162, MCA, is amended to read:

5 **"53-21-162. Establishment of patient treatment plan -- patient's rights.** (1) Each patient admitted
6 as an inpatient to a mental health facility must have a comprehensive physical and mental examination and
7 review of behavioral status within 48 hours after admission to the mental health facility.

8 (2) Each patient must have an individualized treatment plan. This plan must be developed by
9 appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days
10 after the patient's admission. Each individualized treatment plan must contain:

11 (a) a statement of the nature of the specific problems and specific needs of the patient;

12 (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of
13 hospitalization;

14 (c) a description of treatment goals, with a projected timetable for their attainment;

15 (d) a statement and rationale for the plan of treatment for achieving these goals;

16 (e) a specification of staff responsibility for attaining each treatment goal;

17 (f) criteria for release to less restrictive treatment conditions; and

18 (g) a notation of any therapeutic tasks and labor to be performed by the patient.

19 (3) Overall development, implementation, and supervision of the treatment plan must be assigned
20 to an appropriate professional person.

21 (4) The inpatient mental health facility shall periodically reevaluate the patient and revise the
22 individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan
23 must be reviewed:

24 (a) at the time of any transfer within the facility;

25 (b) at the time of discharge;

26 (c) upon any major change in the patient's condition;

27 (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of
28 stay;

29 (e) no less than every 90 days; and

30 (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that

1 includes at least one professional person who is not primarily responsible for the patient's treatment plan.

2 (5) A patient has the right:

3 (a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning
4 of mental health services to be provided and in the revision of the plan; and

5 (b) to a reasonable explanation of the following, in terms and language appropriate to the patient's
6 condition and ability to understand:

7 (i) the patient's general mental condition and, if given a physical examination, the patient's physical
8 condition;

9 (ii) the objectives of treatment;

10 (iii) the nature and significant possible adverse effects of recommended treatments;

11 (iv) the reasons why a particular treatment is considered appropriate;

12 (v) the reasons why access to certain visitors may not be appropriate; and

13 (vi) any appropriate and available alternative treatments, services, or providers of mental health
14 services; ~~and~~

15 ~~(e) not to receive treatment established pursuant to the treatment plan in the absence of the~~
16 ~~patient's informed, voluntary, and written consent to the treatment, except treatment:~~

17 ~~(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously~~
18 ~~by the written order of a responsible mental health professional; or~~

19 ~~(ii) permitted under the applicable law in the case of a person committed to a facility by a court.~~

20 ~~(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment~~
21 ~~described in subsection (5)(e), the right must be exercised on behalf of the patient by a guardian appointed~~
22 ~~pursuant to the provisions of Title 72, chapter 5.~~

23 ~~(7) The department shall develop procedures for initiating limited guardianship proceedings in the~~
24 ~~case of a patient who appears to lack the capacity to exercise the right to consent described in subsection~~
25 ~~(5)(e)."~~

26
27 **Section 40.** Section 53-21-506, MCA, is amended to read:

28 **"53-21-506. No commitment to Montana state hospital.** An individual less than 18 years of age
29 may not be voluntarily admitted or committed by a court to the Montana state hospital unless ~~such the~~
30 individual is ~~transferred to district court~~ charged with a criminal offense pursuant to 41-5-206."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Youth Court Act.

ASSUMPTIONS:

Department of Family Services:

1. The bill provides a point system for minimum, mandatory placement of youthful offenders in detention and secure care facilities. The 10 point mandatory commitment to Pine Hills/Mountain View School will have a significant impact on daily populations.
2. The bill demands that determinate periods of time be mandated for youth acquiring point levels through youth court intervention. DFS will no longer have the flexibility to control institutional populations.
3. The bill provides that current youth court language be deleted and/or modified to increase accountability for youthful offenders and creates a new designation entitled "predatory youth" which results in 180 days in a correctional facility.
4. The bill will impact the current capacity for county-operated detention facilities and shelter care facilities. The primary administrative impact will be on county youth court procedures.
5. Montana Board of Crime Control statistics reveal that 500 youth in 1994 were charged with crimes that would qualify for a mandatory commitment to a state youth correctional facility. Although the intent of the bill is to provide a deterrence to youthful offenders, the impact will at least require a doubling of the current capacity of 80 youth in secure care placements at Pine Hills School. This will require the construction of at least two additional 24-bed cottages at Pine Hills School and contracting with community providers for about 32 additional secure care beds.
6. The average daily cost at Pine Hills School is \$130/day and construction costs for a 24-bed secure care lodge is estimated at \$2,000,000.
7. Total estimated costs are: $\$130 \times 80 \times 365 = \$3,769,000/\text{year}$ for youth care and two cottages $\times \$2,000,000 = \$4,000,000$ construction costs in FY96.
8. The \$3,769,000 youth care costs would continue into future years.
9. There will be no additional revenues generated and all detention/secure care costs for DFS are 100% general fund.

Department of Corrections & Human Services:

10. This bill would provide for evaluations of youths at the Montana State Hospital (MSH).
11. MSH would need an evaluation unit for adolescents separate from the current adult treatment units.
12. Staffing the adolescent treatment unit would consist of 17.40 FTE plus a child psychiatrist who would be contracted with at a cost of approximately \$50,000 per year.

(continued)

Dave Lewis 2-19-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Brad Even Close
BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0540, as introduced

HB 540

FISCAL IMPACT:

Department of Family Services

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	3,769,000	3,769,000
Construction	<u>4,000,000</u>	<u>0</u>
Total	7,769,000	3,769,000
 <u>Funding:</u>		
General Fund (01)	7,769,000	3,769,000

Department of Corrections & Human Services

Expenditures:

FTE	17.40	17.40
Personal Services	516,384	516,384
Operating Expenses	<u>50,000</u>	<u>50,000</u>
Total	566,384	566,384

Funding:

General Fund (01)	566,384	566,384
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Total Net Impact on General Fund Balance:

General Fund (Cost) (01)	(8,335,384)	(4,335,384)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. This bill as written would have a major impact on county government costs relative to construction of detention/shelter care beds and associated operating costs.
2. Youth and/or District courts could experience increased expenses due to court-ordered testing under Section 21.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Youth Court Act.

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
2. The primary objectives of the proposed legislation are to clarify parenting roles and responsibilities and to increase youth accountability for actions along an entire continuum of behaviors. The bill will be effective October 1, 1995.

Montana Board of Crime Control:

3. Montana Board of Crime Control statistics reveal that about 500 youth in 1994 were charged with crimes that would qualify for up to three points. Complete statistics are available only for 1993 when there were 1869 status offenses, such as truancy and false liquor identification; 8185 other offenses, such as misdemeanor theft, city ordinance violations, possession of an intoxicating substance; and 660 more serious transfer offenses.
4. Repealing 41-5-106, 41-5-310, 41-5-311 and 41-5-809, MCA, would legalize holding juveniles accused of status offenses or adjudicated as status offenders in adult facilities.
5. This legislation would allow juveniles to be held in adult facilities longer than 24 hours. It is proposed that youth would be physically separated from adults, which would be inconsistent with federal mandates 42 U.S.C. 5633 Sec. 223 State Plans, issued by the Office of Juvenile Justice Delinquency Prevention Act (OJJDP), parts (12A), (13) and (14). The "sight and sound" requirements of state law are deleted by this bill [page 21, line 12].
6. Montana would not maintain compliance with the OJJDP Act and would lose grant funds of \$612,500 per year, most of which are used to help local governments provide youth services.

Department of Family Services (DFS):

7. DFS plans to serve each year of the 1997 biennium approximately 109 youth in the Youth Alternatives Program and 120 boys in the Pine Hills School (PHS). The capacity at PHS is 80 boys and the average stay is anticipated to be about seven months, resulting in annual service to about 120 boys. During FY94 PHS served 191 males.
8. The bill provides a point system, much like a driver's license point system, wherein a misdemeanor will count as one point and a felony will count as three points. Upon accumulating six points, a youth must be placed in a secure detention facility for five days and upon accumulating nine points, a youth must be placed in a secure detention facility for ten days.
9. After accumulating ten points, a youth would be placed at PHS for no less than 90 days and, if a youth is designated a "predatory youth," placement could be for up to 180 days. This placement is less than the present law base budget of 210 days per youth.

(Continued)

Dave Lewis 3-7-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Brad Molnar
BRAD MOLNAR/ PRIMARY SPONSOR DATE

Fiscal Note for HB0540, third reading

HB 540-#2

(continued)

10. According to the bill, if a youth placed for either 90 or 180 days is willing to accept treatment for mental, emotional, behavioral, substance abuse or other problems, the youth may be transferred to a residential treatment facility after servicing one-half of the imposed detention period.
11. DFS will no longer have as much flexibility to control institutional populations. It appears that these specific provisions in the bill will lead to increased daily populations. The increased populations are projected to be 20 males at PHS and 30 youth at the Montana Youth Alternatives Program (20 females and 10 males).
12. Average daily costs at PHS are \$135 for a total cost of \$985,500 ($20 \times 135 \times 365 = \$985,500$). Average daily costs for the Montana Youth Alternatives Program are projected to be \$134 for youth referred through this legislation for a specialized portion of the program, which are higher than daily costs for the total six-month program. The total alternatives annual cost will be about \$1,467,300 ($30 \times 134 \times 365 = \$1,467,300$).
13. PHS capacity of 80 boys cannot be increased through reopening of closed cottages because they have been condemned. Construction costs for a 24-bed secure care lodge are estimated at \$1.2 million for PHS.
14. Emotionally disturbed youth may not be sent to PHS under any of the options contained in the bill.
15. The bill will impact the current capacity for county-operated detention facilities and shelter care facilities. The primary administrative impact will be on county youth court procedures.
16. Funding for the additional services from DFS will be general fund. Expenditures are phased in the first year consistent with the October 1 effective date and accumulation of ten or more points.
17. Youth Placement Committees will provide recommendations to judges which will result in decreased foster care placements. There is no experience to project cost savings, but future savings may be anticipated.

Office of Public Instruction:

17. Neither the Pine Hills School nor the Montana School for the Deaf and Blind receives ANB payments for youth placed at the facilities. There is no provision for the education funds to follow the students.

Department of Corrections & Human Services:

18. This bill would provide for evaluations of youth at the Montana State Hospital (MSH).
19. MSH would need an evaluation unit for adolescents separate from the current adult treatment units.
20. Staffing the adolescent treatment unit would consist of 17.40 FTE, plus a child psychiatrist who would be under contract at a cost of about \$50,000 per year, and related operating expenses. Expenditures are phased in the first year consistent with the October 1 effective date. The total operating costs will be \$359,830 in FY96 and \$606,384 in FY97 and future years.

Department of Social and Rehabilitation Services:

21. Aid to Families with Dependent Children (AFDC) does not provide a specific amount for each child so no AFDC funding would follow the youth to pay for placement. Supplemental Security Income (SSI) and child support payments are made to the parent(s) and may not be diverted so long as the parent(s) can show the funds are being used to maintain a home for a child to return to after placement. In a few instances of long-term placements of at least five months or more, it may be possible to obtain a diversion of the SSI payment from the Social Security Administration when a home was not being maintained. The maximum SSI payment is \$446 per month, when there is no offsetting parental contribution. A \$97 state general fund match is provided in certain circumstances.

(Continued)

ISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
<u>Department of Corrections & Human Services</u>		
<u>Expenditures:</u>		
TR	10.44	17.40
Personal Services	309,830	516,384
Operating Expenses	<u>50,000</u>	<u>90,000</u>
Total	359,830	606,384
<u>Funding:</u>		
General Fund (01)	359,830	606,384
<u>Montana Board of Crime Control</u>		
<u>Revenue:</u>		
BJDP Block Grant (03)	(320,625)	(427,500)
Title V Grant (03)	(75,000)	(100,000)
Challenge Grant (03)	<u>(85,000)</u>	<u>(85,000)</u>
Total	(480,625)	(612,500)
<u>Department of Family Services</u>		
<u>Expenditures</u>		
Operating Costs	492,750	2,452,800
Construction Costs	<u>1,200,000</u>	<u>0</u>
Total	1,692,750	2,452,800
<u>Funding:</u>		
General Fund (01)	1,692,750	2,452,800
<u>Total Net Impact on General Fund Balance:</u>		
General Fund (Cost) (01)	(2,052,580)	(3,059,184)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. This bill as written will have a major impact on county government costs relative to construction of detention/shelter care beds and associated operating costs for those youth who receive six or nine points.
2. Youth and/or District courts could experience increased expenses due to court-ordered testing under Section 21.

TECHNICAL NOTES:

1. Although Section 24, subsection 17 (Page 36) states that "Health, education, welfare, and other agencies involved with the youth shall ensure that funding for the youth follows the youth to the location in which the youth is placed and that the funding is assigned to the appropriate agency or entity" it is the youth probation officers of the youth courts who use a financial resources checkoff. The District Court or Youth Court judge must order financial resources and these order do not affect and cannot revise AFDC, SSI, child support, school ANB or most other known resources. Treatment funding follows only if the youth is Medicaid eligible and in an approved treatment facility.
2. Section 24, subsection 7 (Page 34, lines 9 and 10) appears to be in conflict with Section 40 (Page 47, lines 18-20).
3. Because some of the terms and provisions in the bill are new and not completely defined, the DFS would require a statement of intent in the bill to enable development of rules for implementation.
4. Page 42, lines 15 and 16, striking the minimum 10 year term will create problems for bond counsel and local governments issuing bonds. This provision needs to be maintained.

(Continued)

(continued)

5. Page 43, line 25: Deleting the preference for regional services is contrary to the policy direction established by the administration and the legislature for human services. Since the amount of federal money available is capped, deleting the regional concept will only increase the cost to counties.
6. Page 47, lines 5-15: Deleting emergency and consent provisions of substantive law may create problems for patients and lead to law suits. The technical problem with current law is being addressed in HB41 to provide a method of exceptions.
7. All or portions of Section 24, subsection 15 (Page 36, lines 3-7) and subsection 16 (Page 36, lines 17-19) may be impossible or unconstitutional to implement because, in cases where a youth requires treatment, services must be provided first, not after time is served.
8. Referral to the Montana State Hospital changes the current policy which is to serve only those youth who are transferred to adult court at MSH.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, reference copy

DESCRIPTION OF PROPOSED LEGISLATION:
An act revising the Youth Court Act.

ASSUMPTIONS:
1. HB540, as amended by House Appropriations and the actions of the Senate Finance and Claims, no longer has fiscal impact on the State of Montana or local governments.

FISCAL IMPACT:
None.

Dave Lewis 4-3-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Finally Got It Right
BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0540, reference copy

HB SUP #2

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRAD MOLNAR**, on February 14, 1995, at 12:30 PM.

ROLL CALL

Members Present:

Rep. Deb Kottel (D)
Rep. Brad Molnar (R)
Rep. Loren L. Soft (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 450, HB 540, HB 240, HB 429

{Tape: 1; Side: A}

The purpose of this meeting was to consider all bills pertaining to juvenile issues being considered by the Judiciary Committee.

Motion/Vote: REP. BRAD MOLNAR MOVED TO RECOMMEND TABLING HB 450. The motion carried unanimously.

Discussion: John MacMaster explained that there was a typographical error on HB 540, page 21, lines 5 and 6. It should strike "include" and insert "preclude."

Motion/Vote: REP. MOLNAR MOVED TO ADOPT THAT AMENDMENT TO HB 540. The motion carried unanimously.

Discussion: REP. LOREN SOFT discussed HB 240 and his concerns about the study. He brought up the list of those persons to be included on the commission. He was hoping to encourage the Governor to endorse it and felt it should not be given any less credence or support than the Health Care Authority or any task force. He read the list of those who would be included on the commission.

requirements that they would lose their money. The money which would be lost to the trust would be the interest on that money during the time that the timber sale was stayed. He said, "It is a fairness bill." He said this is not another attempt to butcher state land. The state lands must comply with all the environmental laws in their process before they can let the timber sales, grazing or mining, etc. and then they have to defend them. This recognizes that the primary purpose is to produce for the schools and cannot put aesthetic value and wildlife on the same footing for the schools. He said it is not a move to prohibit private citizens from being involved in public decisions and cited those entities which represent the private citizens who are involved.

HEARING ON HB 540

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, distributed EXHIBIT 29 to highlight the important portions of HB 540. He also distributed a transcript of a trial which was also referenced in testimony for HB 380, [EXHIBIT 24] which he said gets to the crux of juvenile crime. EXHIBIT 30

{Tape: 2; Side: B}

He said HB 540 represented a total revision of the Youth Court Act. He said the public toleration for the current state of juvenile justice is at its end. The question was, he believed, how to keep a corrigible youth from becoming incorrigible and then from becoming an adult criminal. He felt that changing the current mission which he stated as, "We shall seek no retribution from the youth" as important. The Youth Court Act has a series of statements of what this society will not do, rather than what the youth will not do. He said the amount of juvenile crime is astronomically higher than what is reported and the first thing which must be done is to address how to reduce it. He said the bill sought to hold the counties accountable for the actions of the juvenile offenders within their county. He said his proposal would also take the state out of the federal program which would cost the state \$675,000 per year which he said does not go toward anything that he had seen as extremely beneficial. He said the bill was also intended to re-empower the parents as the first line of defense. He said it attempted to get the state out of the business of second guessing every parental action but to hold the parent responsible for the acts of the child.

Proponents' Testimony:

Janie Petaja testified as a mother of a child who had been in the juvenile corrections system. She shared her observations about the powerlessness of those in the system including parents, police and probation officers. She said the child has the power.

but without control. Whenever she reported the infractions of the conditions of her probation, she was told there was nothing that could be done until the child committed a felony. There are no consequences under the current system, she said, and she recounted examples and further testimony of the limitations of the current system in enforcement and rehabilitation.

Dr. Richard Recor, Psychologist, said he had 17 years of experience working with youth and the court system. His testimony is submitted as EXHIBIT 31.

Neal Christensen, Helena High School Counselor, said he had been a principal at Mountain View School (MVS) for seven years and had been a counselor there for six years. He said that he was adamantly opposed to the closing of MVS and the reduction of the school. He vigorously supported HB 540. He emphasized the need for consequences for actions and the need for discipline in treatment. He felt nothing could be done without change to the Youth Court Act and that this proposed change was significant.

Informational Testimony:

Dennis Paxinos, Yellowstone County Attorney, County Attorneys' Association, said he was speaking neither as an opponent or proponent for HB 540. He agreed that the current Youth Court Act represents a morass and that there were good points in this bill as well as other bills addressing the problem, but had a word of caution. He suggested that it be put into a subcommittee which could be sure that it didn't result in a piecemeal system.

Opponents' Testimony:

Mary Ellerd, Montana Juvenile Probation Officers' Association, stated that HB 540 deserved very careful study since it sought to overhaul the entire Youth Court Act. She said that they had not received copies of the 43-page bill until 8:30 that day and they strongly urged the committee to table the bill and recommend that its content be reviewed as a comprehensive study as proposed in HB 240.

Dick Meeker, Chief Juvenile Probation Officer, First Judicial District, opposed the bill and its timing for consideration. In the short opportunity to review the bill, he outlined nine points of 25 he had compiled from that brief review as an argument for a two-year study of the entire Youth Court Act.

{Tape: 2; Side: B; Approx. Counter: 31.7}

Gordon Morris, Director, Montana Association of Counties, acknowledged that county commissioners across Montana are concerned about the needs of the youths in need of supervision and shared the concerns of the sponsor in proposing the bill. He recognized that it would give county commissioners more say and control in contrast to the current situation and did not know yet

how to respond to that increased vested authority. He suggested that the best thing to do was to take a serious look at HB 240 which would establish a Youth Court Study Commission.

Dick Boutilier, Cascade County Chief Probation Officer, opposed the bill because it was too quick and too broad. Though the Youth Court Act, was in need of change, he did not believe it was completely broken. He believed it was time to study it and to come up with good recommendations for the youth, the victims and the communities and that would take more time.

Candy Wimmer, Montana Board of Crime Control, reiterated the statements of other opponents to the bill. She encouraged that the bill have the opportunity to have a two-year consideration along with other proposals for review of the system. She said they were involved in the act not because of the \$675,000 federal funds, but because the act would set up a guide for meeting constitutional rights of children. She felt this bill would violate a good many of those rights.

Questions From Committee Members and Responses:

REP. GRIMES asked the sponsor to address the objection to doing this so quickly based upon the fact that this was a big bill as well as the constitutional issues raised and the role of parents.

REP. MOLNAR admitted that it was a big bill. He cited testimony that the problem has been that little changes had been made which had created a mishmash. This bill would cover all of the Youth Court Act and also parts of parental responsibility and mental health issues. He described it as a total comprehensive program. The constitutional rights of the children would not be violated since an attorney is present at each step of the juvenile process. He said that the bill was consistent with federal standards for housing juveniles separate from adult jail populations. In addressing the role of parents, he cited the current problem they have in requiring their children to take prescribed medications and that the bill would seek to solve that. He described situations which would give the parents more freedom in attempting to control their children who might be acting irresponsibly or violently.

REP. WILLIAM BOHARSKI asked if the sponsor knew what the fiscal impact of the bill would be.

REP. MOLNAR said the fiscal impact would be minor because it would not create any more rooms at Pine Hills. His intent was to get counties to accept their responsibility to interdict the kids while still young and as first time offenders. He described how the offenses would be treated in successive penalties or treatment.

REP. BOHARSKI asked the sponsor to respond to the criticism by local government entities which opposed the bill and his

statement that there are already statutory obligations which they are not doing.

REP. MOLNAR stated that they are responsible and are shirking their responsibility by not providing the space, putting the juveniles back on the streets and calling it good. He said page 31, lines 27 - 29 attempted to have the money that is currently with the youth follow the youth to hold down on the fiscal impact. For instance, child support that is withheld during the child's incarceration should go with the child wherever they are in the system or if the child is at Pine Hills the money should go from the school he would have been attending to Pine Hills School where he is. SSI payments should go with the child to offset their treatment and care.

REP. DANIEL MC GEE asked how long the sponsor had been working on this bill.

REP. MOLNAR said he had logged over 400 hours on his personal computer.

REP. MC GEE asked if he had said he had been working on it over one and one-half years.

REP. MOLNAR said that it was actually a little over a year. He said that this bill was a result of working with people in the situations which need to be addressed rather than from the point of view of administrators of programs. He said currently 30% of the population at the state prison were juvenile offenders.

REP. MC GEE asked if Ms. Wimmer agreed that juvenile crime is a problem and she did agree.

REP. MC GEE asked what she or the Board of Crime Control had done in the last year to year and one-half done to alleviate the problem.

Ms. Wimmer said that over the past year and one-half the concentration of effort was on a study of the Youth Court Act and had delivered amended METNET (Montana Educational Telecommunications Network) broadcast to interested parties and to county attorneys, probation officers, and practitioners in the field about the provisions of the Act. They had distributed federal funding for various programs and said she would supply further information on that if it was requested.

REP. MC GEE asked if the hesitancy she and other opponents had for this bill was primarily because they had not had time to study the bill and not because the bill would not address the problem.

Ms. Wimmer said that one of the serious considerations was that there had not been ample opportunity for public review of the bill and its implications.

REP. MC GEE suggested that they all spend time reading and studying the bill and meet together for executive action and she agreed.

REP. TASH asked Dr. Recor if there were cases where parents were charged with child abuse for trying to assist their children.

Dr. Recor said that just the previous morning he had two specific cases. He cited some information from those cases where one father was charged with a domestic dispute for yelling at his daughter, who had twice stolen the car, in an argument over the use of a car. The daughter was free of any charges. The other involved a 3-year-old hyperactive child where the mother has been investigated for child abuse because she was trying to restrain the child from hitting its head against the floor. The parent cannot utilize the same therapeutic modality for restraint as is used by hospital staff for the child because of the potential abuse charges.

REP. CURTISS asked Ms. Wimmer for a list of the programs that she had mentioned that were being implemented.

Closing by Sponsor:

REP. MOLNAR closed by addressing the recommendations for a two-year study and said that would cost one generation of youth to make the decision. He felt that by doing absolutely nothing now, taking two years to do the study, one session to accept the recommendations and then the legislation would have to be written and implemented and then they would have to see some turnaround in the kids would total six years. He said the eighth grader who now is the one at risk could already be in Deer Lodge before they had done anything. He said that even if his bill were 100% wrong, it would be no more wrong than what is currently being done, but at least they would be trying something. He addressed other specific objections to the bill.

{Tape: 2; Side: B; Approx. Counter: 58.2}

HEARING ON HB 505

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, opened the hearing on HB 505 saying that the bill came at the request of the Human Services and Aging Subcommittee on Appropriations. The bill would encourage the courts to collect private contributions from a youth's parents or guardians for the care, custody and treatment of the youth. He

said an amendment would be forthcoming which would further clarify the distribution of those contributions.

{Tape: 3; Side: A}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/14/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ late ^{8:20}	✓	
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓ ☺		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith		✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

HIGH POINTS TO REVISIONS TO YOUTH COURT ACT

By: Brad Molnar

Page 4, Line 3	Include juvenile offenders being exempted from Workers' Compensation
Page 6 Lines 5-6-7	Parent can require child to take medicine
Page 7, lines 1-2-3	Extreme reaction to extreme circumstances
Page 9, Line 12-13-14	Prevent and reduce youth delinquency through immediate, consistent, enforceable and avoidable consequences
Page 9, Line 18	Parties are assured a fair accurate trial
Page 10, Lines 13, 14, 15	Detention facility-shelter care approved by county facility
Page 11, Line 27	Offense means offense
Page 16, Line 16, 21	First violation handled by JPO, rest handled by courts with JPO's primary function to make sure that sentence (community service, restitution, school attendance, friends) carried out
Page 16, Lines 26-27	Youth kept in area of physical separation from adults
Page 23, Line 2-3	Restitution, person contributing to the delinquency of minor may pay
Page 27, Line 27-28	Court may order youth to undergo urinalysis
Page 27, Line 10	Must consider youth family and community
Page 28, Line 8-9-10	Youth must be able to appreciate criminality of act
Page 31, Line 5-26	Habitual offenders-predatory youth minimum sentences
Page 31, Lines 27-29	Youth money follows youth
Page 37, Lines 22-27	School may refuse to accept active offenders

Page 35, Lines 13 & 17 Seal records 3 years after supervision ends

Page 36, Line 25 through
27 Space must be provided for offending youth

MONTANA TWELFTH JUDICIAL DISTRICT COURT, HILL COUNTY

IN RE:) Testimony of Teresa L. Olson
TERESA LYNN OLSON) and the Court's Disposition.
Case No. DJ-94-023
January 4, 1995

Excerpt of Proceedings held before HON. JOHN WARNER,
JUDGE, District Court of Hill County, Havre, Montana.

APPEARANCES:

For the State: DAVID RICE
Hill County Attorney
P.O. Box 912
Havre, Montana 59501

For the Youth: ROBERT PETERSON
Attorney at Law
P.O. Box 268
Havre, Montana 59501

The original of this document is stored at
the Historical Society at 225 North Roberts
Street, Helena, MT 59620-1201. The phone
number is 444-2694.

Douglas D. Christensen, RPR
Official Court Reporter, Havre, Montana

ORIGINAL

This testimony is presented in support of suggested revisions to the Youth Court Act. As a clinical psychologist licensed to practice in Oklahoma, Virginia, California and Montana, with over 17 years of experience with youth in a wide variety of treatment settings, I have found the current juvenile system to be seriously lacking in three distinct areas.

* Immediacy of response is essential. With the decreased utilization of psychiatric hospital beds and an increase utilization of existing youth detention beds, parents and community members are having to take immediate action to protect themselves from aggressive and out of control children and adolescents. The children currently being admitted to psychiatric hospitals are not only more serious, but require a high degree of external control provided by the physical environment and by large numbers of staff. Hospital stays are decreasing and children are returned back to the home environment in a very short period of time. Either immediate response by community agents and/or available temporary placement facilities are needed. The current centers are many times busy and cannot be responsive to these demands.

* Empowerment of parents is necessary. Extreme situations requiring restraints and/or action designed to protect self and/or others should not be considered as child abuse. Parents should be allowed to administer medical procedures as deemed medically necessary by a physician and/or court approved designee. This is especially true in children who have impulse disorders such as Bipolar Disorder and Attention Deficit Disorders. Most significant are those children who have a dual emotional and conduct disorder. Having been a Montana psychiatric hospital administrator in the past, I have had the opportunity to see many of these youthful offenders who have a severe emotional disturbance but do not quite belong in either institution. Since many of these individuals are returned back to the home setting in a very rapid fashion the parents again are having to deal with the responsibility of managing extreme situations with very little authority to manage them.

* Placement in adult centers is needed. the facilities for temporarily holding juveniles are extremely limited. Keeping in line with the intent of the law, juveniles should be kept physically separate, yet should be able to use existing facilities that house adults. As long as these facilities are immediately available and no adults are within the physical area where the juvenile is kept, then they should be allowed to be temporarily housed, rather than placing the juvenile in an unsafe environment.

The essence of my testimony is that juveniles must be given immediate and consistent consequences for their behavior, both positive and negative, by social agents. Parents should be considered as primary behavioral change agents empowered to take reasonable action to provide the structure that is necessary to create a feeling of safety for children and other family members. Please put some teeth into the law so that juveniles will know that there are consequences to their behavior.

JUDICIARY

DATE 2.14.95

SPONSOR(S)

Rep. MOLNAR

H B 540

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

[illegible]

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 16, 1995, at 7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 551 DO PASS; HB 366 & HB 450 TABLE
HB 186 DO PASS AS AMENDED
HB 240 DO PASS AS AMENDED
HB 256 DO PASS AS AMENDED
HB 380 DO PASS AS AMENDED
HB 429 DO PASS AS AMENDED
HB 443 DO PASS AS AMENDED
HB 540 DO PASS AS AMENDED
HB 543 DO PASS AS AMENDED

registration of violent and sex offenders between Mr. MacMaster and REP. KOTTEL.

Motion/Vote: REP. TASH MOVED HB 380 DO PASS AS AMENDED. The motion carried 17 - 2; REPS. HURDLE and KOTTEL voted no.

{Tape: 3; Side: A},

EXECUTIVE ACTION ON HB 540

Motion: REP. MOLNAR MOVED HB 540 DO PASS.

Motion/Vote: REP. MOLNAR MOVED TO AMEND HB 540 TO STRIKE SECTIONS 1, 2, 3, AND 4; RESTORE "CONCURRENT" ON LINE 11 OF PAGE 13; SECTION 18 CHANGE "INCLUDE" TO "PRECLUDE" ON LINE 6; AND ITEMS 9 OF EXHIBIT 8; STRIKE THE AMENDED LANGUAGE ON LINE 30 ON PAGE 42; LINE 9, SECTION 7, LINE 12 INSERT "PREVENT AND REDUCE YOUTH DELINQUENCY TO IMMEDIATE, CONSISTENT, ENFORCEABLE AND AVOIDABLE CONSEQUENCES OF THE YOUTH'S ACTION AND A PROGRAM OF SUPERVISION, CARE, REHABILITATION, DETENTION, COMPETENCY DEVELOPMENT, PROTECT THE COMMUNITY"; SECTION 16 1(E), PAGE 20, LINE 6 ADD (E) DETENTION CENTER; PAGE 20 SUBSECTION 3(E), "PLACEMENT MAY BE IN COMMUNITY PROGRAMS BY YOUTH COURT"; ITEMS 10, 11 AND 12 OF EXHIBIT 8. The motion carried 14 - 4; REPS. WYATT, HURDLE, CAREY and KOTTEL voted no. (REPS. GRIMES and AHNFR voted aye by proxy.)

Discussion: REP. MOLNAR discussed the proposed amendments item by item.

{Tape: 3; Side: A; Approx. Counter: 4.0; Comments: A copy of the amendments was not given to the secretary.}

Motion: REP. MOLNAR MOVED HB 540 DO PASS AS AMENDED.

Discussion: REP. KOTTEL said it was a significant bill and did not feel comfortable putting it through the system hoping it would all come together. She went through the issues item by item in the bill.

{Tape: 3; Side: A; Approx. Counter: 35.0}

REP. ANDERSON responded to the bill by stating that they could kill the bill in committee whereby they would be left with nothing to work with to solve the problem with youth. Though it might not be perfect, it had a long way to go in the process before it would become law. He suggested that they pass it out of committee and allow it to have the benefit of the process to make the necessary changes.

REP. DIANA WYATT felt that they did have other bills in the process which would address the youth problems. She did not like sending out bills which need to be fixed someplace else in the process and she said they needed to ask if there was really a

compelling need to make those drastic changes that affect children or could it be postponed another two years. She thought the changes were more than substantive, but extremely drastic and a change in the policy direction for the state.

Motion/Vote: REP. WYATT MOVED TO TABLE HB 540. The motion failed by voice vote.

Discussion: CHAIRMAN CLARK commented on the process in refining bills and agreed with REP. ANDERSON that if this bill would come out of the legislature in its present form it could be subjected to several changes. He asked REP. KOTTEL to stay with the bill while it progressed through the process with her compelling arguments.

REP. SOFT suggested that the subcommittee stay intact and stay with the bill as it progressed through the process.

REP. DEBBIE SHEA clarified the committee's choices and asked why this large and significant a bill was submitted so late in the session.

CHAIRMAN CLARK further clarified the committee's choices in the bill passage process and said he could not answer why they had received this particular one so late.

REP. TASH commented on the time constraints and conflicts of interest on similar bills, he reminded the committee that they could not make a perfect bill out of it.

REP. CAREY thought the bill belonged with the study commission.

REP. MC CULLOCH reiterated the statements made by REP. CAREY in commending the sponsor for the work invested, but that she also was in favor of it being studied over the next two years.

REP. TREXLER commented that there were many who recognized the extent of the work REP. MOLNAR had invested in the bill, but there were just too many things that needed to be addressed in it for its support at this time.

REP. MC GEE asked about the effect of tabling the bill.

CHAIRMAN CLARK said he understood that technically there is nothing dead until the session ends. He believed they could revive it after transmittal if it were tabled.

REP. MOLNAR argued against the tabling and against the charges brought against the bill to which he said he had not had opportunity to respond. He gave the committee his strong feelings regarding the need for the passage of this bill.

CHAIRMAN CLARK said that none who had spoken against the bill or pointed out problems with it had yet voted on the bill.

REP. MOLNAR said he would like to see the bill passed and would work to deal with the problems or "holes" in it and he wanted the opportunity to defend it all through the process.

Vote: The DO PASS AS AMENDED motion carried 12 - 5 by roll call vote.

{Tape: 3; Side: A; Comments: The vote was reported as 13 - 5 on the committee report, the roll call vote indicates 12 - 5 and the tape indicates some question about REP. TASH voting aye (no proxy was turned in for him.)}

Motion: REP. ANDERSON MOVED TO ADJOURN.

{Comments: This set of minutes is complete on three 60-minute tapes.}

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ late 8 ¹⁰	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ late 8 ³⁰	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 540 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 5.
Strike: "39-71-117, 39-71-118, 39-71-774,"
2. Page 1, line 18 through line 30 of page 5.
Strike: sections 2 through 4 of the bill in their entirety
Renumber: subsequent sections
3. Page 9, line 14.
Following: "detention,"
Insert: "competency development, community protection,"
4. Page 20, line 5.
Strike: "or"
5. Page 20, line 7.
Following: "10"
Insert: "; or
(e) in a detention facility"
6. Page 20, line 15.
Strike: "or"
7. Page 20, line 16.
Following: "facility"
Insert: "; or
(e) a community youth court program"

mw
2/17
Committee Vote:
Yes 13, No 5.

411352SC.Hbk

8. Page 21, line 6.

Strike: "include"

Insert: "preclude"

9. Page 25, line 13.

Following: "against"

Insert: "persons other than"

Strike: "or other persons"

10. Page 31, lines 6 and 7.

Strike: "A youth" on line 6 through "1 week." on line 7

11. Page 31, line 8.

Strike: "2 weeks"

Insert: "5 days"

12. Page 31, line 9.

Following: "points"

Insert: ", "

Strike: "30"

Insert: "10"

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/16/95 BILL NO. HB 540 NUMBER _____

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash		
Rep. Cliff Trexler	✓	

Amendments to House Bill No. 540
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 17, 1995

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Insert: "5 days"
12. Page 31, line 9.

Following: "points"

Insert: ", "

Strike: "30"

Insert: "10"

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 10, 1995, at
8:00 a.m.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger Debruycker (R)
Rep. Gary Feland (R)
Rep. Marjorie I. Fisher (R)
Rep. Don Holland (R)
Rep. Royal C. Johnson (R)
Rep. John Johnson (D)
Rep. Mike Kadas (D)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. William T. "Red" Menahan (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: None.

Members Absent: None.

Staff Present: Clayton Schenck, Legislative Fiscal Analyst
Marjorie Peterson, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 440, HB 503, HB 540
Executive Action: HB 6 DO PASS AS AMENDED, HB 7 DO PASS AS
AMENDED

{Tape: 2; Side: B; Approx. Counter: 24.1.}

HEARING ON HB 540

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, opened the hearing on HB 540 by stating that this was not an average bill, but one that deals with social reform by revising the Montana Youth Court Act. The primary objectives of this legislation is to clarify and change parent roles and responsibilities and to increase youth accountability for their behavior. REP. MOLNAR said he has read case laws and federal guidelines to come up with the suggestions and changes in this bill. The fiscal note alleges that this bill could have a major impact on county government costs relative to construction of detention facilities, as well as operating costs. Under Section 21, youth and district courts could experience increased expenses due to court-ordered testing. He is concerned about #12 on page 2 of the fiscal note, where it states that the average daily costs at Pine Hill School could be as much as \$135, for a total of about \$1 million. He disagreed with the fiscal note because adult prisoner per diem is only about \$40 a day. REP. MOLNAR explained other parts of the ~~fiscal~~ note, which is included as an exhibit. EXHIBIT 7a.

{Tape: 1; Side: B; Approx. Counter: 41.2.}

REP. MOLNAR offered three amendments which are also included here as exhibits and all the information he discussed is on the amendments, HB054001.AGP, HB054001.AJM, and one with no ID number that refers to page 36, line 19. EXHIBITS 8, 9 and 10.

REP. MOLNAR also submitted a newspaper article from 1993, "Stalling repeat youth offenders," testimony from Richard Recor, a licensed psychologist, and other papers that were attached. Mr. Recor said he had 17 years experience with youth treatment and finds the current juvenile system to be seriously lacking in three areas: immediacy of response, empowerment of parents, and necessary placement in adult centers. EXHIBITS 11 and 12.

Proponents' Testimony:

REP. ELLEN BERGMAN, HD 4, Miles City, said she supported the bill. After she received a letter last January from the principal at Miles City High School, who was having problems with the Juvenile Youth Court Act, she thought of introducing a bill to deal with some changes in the Act. When she came to the session and read REP. MOLNAR's bill, she was encouraged and decided to support his bill instead of introducing a similar one. She said that the laws are too lenient for minors and should be changed. She read a quote from the letter: "The philosophy of

the Youth Court Act, as noble and humane, is to offer Montana's youth a program of supervision, care and rehabilitation and to recognize the importance of preserving the unity and welfare of the family, whenever possible, and ceases to remove the element of retribution. Montana's Supreme Court has decided to redeem remedial goals in the Act. The method ... of the Act is strictly for rehabilitation not retribution and the purpose of the Act is to provide a mechanism in which the state can act in the place of a parent of a youth when necessary." The very philosophy of this Act, which is on a hypothetical basis, simply does not work and realistically is used to address juvenile criminal offenses. One juvenile probation officer recently told her: "A youth, under the age of 18, can commit 10,000 thefts of merchandise with a value of \$399 and absolutely nothing can be done because they [the probation officers] are not authorized to punish them." The same youth can be involved in malicious property destruction but restitution for the victim will seldom be received." A recent study at a youth conference indicated 49% of those asked said the Youth Court Act was totally ineffective in controlling youth crimes and their behavior. She believes that Montana will have the youngest adult prison population in all 50 states. The mean age of 24 years is a sobering indicator that young adults are being sent to prison for offenses they've committed prior to age 18, with absolutely no punishment. She hopes the Act will be revised by this bill and the statutes changed.

Neil Christianson, former principal at Mountain View School, Helena, said he felt enthusiastic about the concept of today's legislation because something must be done before it gets too far out of hand. He thinks this is the best legislation he's seen because it is trying to do something for youth. He has worked at Helena High School, where he said between 200 to 300 students at that school need to be somewhere else -- and he doesn't know how to solve the problem. He has read, studied and done everything he thought possible to come up with ideas for necessary changes. He has talked to as many kids at all levels as anyone in the state of Montana; he's been a counselor and principal and he knows how the kids act. There are kids who intimidate others at school, trying to bring them into gangs, and they should be somewhere else -- not in a public high school. They definitely need to be off the streets. He also stated that in two to four years, elementary principals will be dealing with more corrupt youth than ever. Something needs to be done and these kids need to be taken care of in a safe environment that will ensure them rehabilitation. He truly believes that crime rates will go down tremendously if kids are dealt with properly when they commit crimes. He said that money is the main flaw in the bill, in that there probably will not be enough to enforce these new changes. There will be too many kids to take care of and that would be a problem. Maybe when kids see they are going to be seriously dealt with, they will think twice about committing crimes.

Jane Petaja, self, said she was a mother of a 16-year-old who is on probation. Her daughter was a run-away and has been in trouble many times. She did not agree that the court systems, or juvenile system, was working. She said it did not help her nor did it help her daughter. The rules need to be changed -- her daughter has been in danger many times because there is no punishment in the current system. She often wondered what would happen if her daughter ever committed a felony. She thought she would probably be dealt with then. She stated that there should be something done while her child is still young enough to change her actions, not wait until a felony is committed.

Connie Boyer, self, supports the bill because the system does not work. It is full of empty, idle threats that are not followed up. The kids know that and continue to commit crimes. She has experienced adults in the probation system lying to her kids and misguiding them. They threatened to give her kids drug tests on a weekly basis, but never did. She definitely thought changes must be made and soon.

Opponents' Testimony:

Mary Ellerd, Executive Secretary, Montana Juvenile Probation Officers Association, said they oppose HB 540. There is no argument about the need to revise the Youth Court Act, but this bill attempts to completely revise the Act without the benefit of input from most of the people in the agencies who would be directly affected. However, the monetary factor ensures that passage of this bill would necessitate construction of many jails and detention facilities across the state of Montana. She said there was another bill, HB 240, which calls for a comprehensive review of the juvenile justice and juvenile mental health areas, which would include a rewrite of the Youth Court Act. That bill also appropriates necessary funding and requires an end-product by December 1, 1996. She proposed the amendments in HB 540 could accomplish comprehensive review.

Richard Meeker, Lewis and Clark County Probation Officer, said there were certain problems with the bill as written. It has contradictions and unanswered questions. One of his concerns is the reference on page 10, line 19, where a parent can force the child to take prescribed medicine and to exercise that right would not be considered abusive parental authority. It does not mention who the medicine must be prescribed for. In fact, the medicine could be prescribed medicine for another person and the parent could use it on a child. On page 14, line 28, the detention facility is now a shelter care facility and he said only parts of definitions are included, not the full definitions in the Youth Court Act. In that respect on page 16, line 15, it says a shelter care facility is not a secure, restricted facility. He said the bill contradicts itself in many places and he explained inconsistencies in the bill. He said he had tried to contact Rep. Molnar many times before the session, but his

phone calls were not returned, and when he did get in touch with him, he did not seem at all interested in Mr. Meeker's suggestions.

Jan Shaw, Executive Director, Montana Youth Homes, said she works at a non-profit organization that operates programs for teens who need supervision and care. They are governed by a volunteer Board of Directors. She strongly urged the committee to review and study HB 540 to see if the bill truly meets the needs of the juvenile offender and other youth in need of care. She submitted her testimony. EXHIBIT 13.

Howard Gipe, Flathead County Commissioner, said one of the detention centers in the state was in Kalispell. From his standpoint, funding is one of the main problems. It is from a combination of state, federal and local funds, with 50% funds from the Board of Crime Control. In his area, Flathead County has the largest number of youth in any facility and the costs are about \$130 a day per person. If the bill passes, the county commissioners must find places to hold these juveniles. They spent about \$25,000 last year transporting juveniles to neighboring counties where there was room in the jails. There are major problems that need to be addressed and he urged the committee not to make costly mistakes.

Jerry Criner, Libby County Commissioner, agreed with Mr. Gipe. He said this bill is an unfunded mandate and there is no way for any of the counties to find the money to fund it.

Al Horsval, Ravalli County Commissioner, said he has served on the Montana Corrections Association, the Montana Juvenile Probation Association, the Montana Sheriff Peace Officers Association, has worked for 10 years as a county probation officer and is a member of MACO (Montana Association of Counties). He said he has been familiar with the Youth Court Act since the first day he put on a badge in 1973 and it is, by no means, a perfect document. They have recognized for many years that there needs to be changes in the Act. Some of the changes offered by Rep. Molnar are just the "tip of the iceberg." There are some good ideas in the bill, however, overall, it won't work as is and many of the changes definitely need substantial study before they should be adopted into law. He agreed with previous opponents in that the reason HB 540 is before the legislature today is because everyone agrees it doesn't work. If there is a desire to change some of the Act, it should be done so with sufficient review. He cautioned the committee that the rest of the country might look at this bill as a model to use and it should be forthright and practical to carry out. This bill would put kids in jail who have never before been recognized as "jailable" offenders in the state of Montana. He asked that be considered as the backbone of this bill. He said he has seen a lot of success stories and those shouldn't be forgotten. This bill, he thinks, is trying to put teeth in the youth they fear -- those who really need to be treated as criminals and this

legislation would do it. But, he suggested to be careful to make a distinction as to which youth are treated as criminals. As an example, Mr. Horsval said, as a citizen of Montana, if a probation officer tried to put his daughter in jail for running away from home, they would have him to contend with. Mr. Horsval suggested to turn Rep. Molnar's ideas over to an interim committee and bring the study results to the 1997 legislature with good solid changes in the Youth Court Act, rather than something those in the business don't think will work.

Gloria Hermanson, Montana Psychological Association, Helena, agreed the Act needs study, but the bill does not do it. This bill would try a child as an adult and could hamper their chances for education. As a mother, she has had to deal with a runaway child, who would probably not be here today if this bill had been in effect then. Her daughter is now in her twenties, is healthy and has a job. She urged the committee to demand further studies before this bill is passed.

David Hemion, Mental Health Association of Montana, Helena, said his objections to this bill were mainly in the area of treatment of mentally ill children. He cited sections in the bill with problems in how youth are evaluated. He submitted his testimony. EXHIBIT 14.

Andrea Larosa, Montana Advocacy Program, said the bill needs revisions and seems to have been hastily written. With regard to children with mental illnesses, her greatest concern with the bill is that it eliminates many places those children can go to receive treatment. She is also concerned they not be placed in juvenile correctional facilities. The tragedy to her, in many cases, is that the current Act does not require kids to receive proper treatment, and many are under-diagnosed. Mental illness is not always identified at the onset and she does not want the youth of Montana hanging themselves in a jail somewhere, as has happened in the past. Ms. Larosa referred to Section 12 which places youth with adults in prison, but using separate cells. For youth to be in that kind of environment could probably mar them for life. She went on further to say that Section 8 is "carte blanche" as to where juveniles can go and which local law enforcement facilities can be used. The bill also allows involuntary commitment to Montana State Hospital and she urged the committee to recognize that of returning to the "old days" of dealing with mental illness. The Mental Health Association is also concerned with Section 39, which changes the mental health commitment code in a way that has nothing to do with the Youth Court Act. She said that other committees that have looked at this legislation have not adopted that section as it is absolutely unacceptable. She stated there were many parts of the bill in violation and that the bill should be researched carefully before any changes are made.

Robert Torres, Montana Association of Social Workers, asked for the bill to be tabled and submitted his testimony. EXHIBIT 14.

Hank Hudson, Director, Department of Family Services, Helena, said he has studied the bill carefully and worked very hard to come up with the figures on the fiscal note. He still doesn't know what it would cost the department and the state and he thinks the fiscal note is very conservative. He does know there won't be enough resources to enforce the laws and it also brings unfunded mandates to local governments, such as youth being tried as adults. There would be licensing and staffing costs, costs associated with detention centers, as well as costs for operations in counties and public works programs. He noted that he couldn't even imagine how much the unfunded mandates would come to, but he could imagine the liabilities that would be involved. He said there was language in the bill that didn't carry any fiscal impact and he fears the bill will be stripped of everything that costs money and passed in another form. He said it could be left with page 11, lines 15 through 17, where it states: "The term [child abuse or neglect] does not include what appears to be an extreme reaction to extreme circumstances, such as self defense or defense of others, action taken to prevent the child from self harm, or normal physical punishment or normal physical consequences of one's actions." He does not know what normal physical punishment could possibly mean, or normal physical consequences of one's actions. He does not know how that would be measured -- one person might think a certain punishment is harsh and another might think it mild. It is impossible to enforce. Page 12, lines 1-3, refers to failure to provide shelter -- they haven't had many cases where people deny shelter to youth, although he did have some cases where the parents thought an appropriate punishment for a child was to make him/her sleep outside all night. **Mr. Hudson** also referred to page 10, lines 20-21, where the parent can force the child to take prescribed medicine. This, he felt, crossed the line in child abuse laws, especially if it caused disfigurement or injury to a person, such as harm to an organ. If you agree to force your child to take medicine that might cause them injury or bodily harm, then you need other help. If you are going to hurt your child, there is definitely something else wrong with you. **Mr. Hudson** also said the biggest missing piece is what is referred to as "predictable, sequential, meaningful consequences." Probation officers all over the state have told him there needs to be some consequences to offenders, because right now, they know nothing will happen to them. The bottom line is: how to do it creatively and effectively. **Mr. Hudson** further stated that an excellent contribution to the progress of this issue would be to design a program whereby predictable immediate consequences for youth will occur at an earlier stage of delinquent behavior. A proposal by the department is to double the capacity at Mountain View School and double the length of stay. Hopefully, this would offer the juvenile an experience that would shock them and their actions would turn around. He felt the Mountain View proposal was one that would be in tune with what people who testified were saying today: tougher sentences, longer sentences, more kids sent to facilities before they become "too bad." He also said the issue of adequately

funding MRM (Managed Resources of Montana) is very important, as there could be many more sad stories like the ones heard earlier today. One of the biggest risks to children in Montana is the absence of adequately-funded youth mental health systems.

{Tape: 2; Side: B; Approx. Counter: 0.1.}

Mr. Hudson said he was very nervous about the funding of the bill because he doesn't think it has been researched enough to even come up with a ballpark figure. He said it would probably be very expensive as it is written today.

Jim Smith, Montana Peace Officers Association, Helena, said there were many peace officers who resist the idea of placing youth offenders with adults. He has a 17-year-old boy who was having trouble graduating from high school. After a few instances, he met with the Lewis and Clark County Probation Officer, Mr. Meeker. He has helped his son through many problems and he will be going to MSU in the fall. Mr. Smith thinks the authority in Lewis and Clark County was swift and very effective. The system has worked in his case and his story is one of success. This is a serious issue and he hopes they can all move forward and eventually, it could turn into a usable bill that can work. But, as written, he opposes it today.

Gene Kiser, Montana Board of Crime Control, said he has been in law enforcement for over 30 years. As he studied the bill, he realized that it could be of value some day, but it will definitely take time. He said while working enforcement in Billings near a bad section of town, 24th Street, there could easily be 150 to 200 youth taken off the streets at any time. When he began in law enforcement in 1960s, they were locking kids up in the same facilities as adults, although separated, but where they could still see and hear each other. The Board of Crime Control has decided to support HB 240, but to ask that this bill be studied further. It has so many changes that aren't even apparent or obvious. He also noticed that there was only one law enforcement person in the audience and no administrative staff who should have been present at the hearing for a bill with such enormous changes. The people involved have not had sufficient time to research the outcomes this bill would generate.

Sharon Hoff, Montana Catholic Conference, agreed the system is not working, but this bill will not fix it. She suggested putting more funding into prevention programs that would keep kids from becoming criminals at the beginning. She said putting kids away will not solve the problems; they need something up front that will work.

Candy Wimmer, Montana Board of Crime Control, said her members are concerned about the bill, but think it's a good start. She said that the degree of separation is developed by policy issue and submitted a copy dated April 1989, which specifically requires that, to remain in compliance with the OJJDP Act, the

juvenile jail detention policy, youth offenders must have sight and sound separation while in jail. **EXHIBIT 16.**

Mr. Lechner, Director, Court Services, Yellowstone County, said he has been a juvenile probation officer for 23 years. He is opposed to one specific part of the bill where it changes juvenile services. Over the years he has watched money being taken away from prevention and an emphasis turned over to using Warm Springs. He watched a session that took money away from mental health where those who needed help were kept on the streets. He said every enforcement officer in the room would probably love to have a detention facility in his own community. In 1981, he started to help develop juvenile detention facilities in Montana and, at that time, he had to beg for funding. It cost him \$800,000 to get an eight-bed facility and \$600,000 to run the operation every year. He only asks that they not lock up mentally-ill youth or runaways who have been physically, mentally and sexually abused at home.

Dennis Taylor, Deputy Director, Department of Justice, agrees with the other concerns heard today. He does support the idea of taking a serious look at the Montana Youth Court Act, but the approach in HB 240 is more encouraging. He thinks it would be advisable to get parents and school administrators together with law enforcement personnel to study this bill and allow them to come up with a comprehensive reform for the Act for the next session.

Questions From Committee Members and Responses:

REP. WILLIAM WISEMAN, HD 41, Great Falls, asked REP. MOLNAR if anyone had talked to him about the bill before he introduced it. REP. MOLNAR said he talked to juvenile officers in Glendive, Billings, and others, but many other people did not want to talk about it.

[It is hard to decipher Rep. Molnar's voice on the tapes. Parts of his testimony is inaudible and, therefore, cannot be transcribed. All information is included in exhibits.]

REP. WISEMAN asked if they could afford the time it would take to have further studies as some opponents have suggested. He thought the Act needed fixing right now.

REP. JOE QUILICI, HD 36, Butte, said it was a fiscal committee, so they were looking hard at the funding side of the bill. They certainly realize the problems with the youth of today and something should be done to help them. Referring to the fiscal note, he said the general fund impact would be over \$5 million. He is concerned whether Rep. Molnar has thought of how much added costs it would be to the counties and the courts.

HOUSE APPROPRIATIONS COMMITTEE

March 10, 1995

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REP. JOHN JOHNSON, HD 2, Glendive, asked if there were standards for youth correction centers. Ms. Wimmer said that the Department of Family Services was responsible for licensing the facilities every year. The county commissioners do not have that responsibility. REP. JOHNSON then asked if the standard applied to every detention center built in every community that needed one. He clarified that you could not just gather in a house and call it a detention center. Ms. Wimmer said the standards apply to any facility that hold the youth in a secure environment. There is also a provision for non-secure environments, called holdovers, which do not require a license. REP. JOHNSON then asked Mr. Horsval if there was a detention center in Ravalli County. Mr. Horsval said the rules for juvenile facilities have to comply with certain correctional requirements from the federal level and that the National Institute of Corrections has rules that would apply. Ravalli County just built a new jail where two juvenile cells were proposed in the bond issue. It would not be possible for Ravalli County to pick a house anywhere and spend money to house juveniles. Kalispell is running into problems because it is so full. The entire facility is a 44-bed facility with two juvenile cells and it cost about \$3 million.

REP. ROYAL JOHNSON, HD 10, Billings, asked Mr. Meeker if he had met with REP. MOLNAR. Mr. Meeker said he was contacted in December, but did not meet with REP. MOLNAR for any length of time. He had called and left many messages, but REP. MOLNAR did not return them. He said when he testified this morning about many inconsistencies in the bill, REP. MOLNAR did not seem at all concerned with his suggestions. REP. JOHNSON said he was concerned that there are kids on the street who, according to law enforcement, are dangerous and there is no place to put them. Mr. Meeker said he did not find the gross numbers of offenders increasing in his district, but he did say they did have a large number of offenders who are very disturbed children. In the past, agencies have dealt with them, now juvenile justice wants to commit them and some are very mentally ill. The perception that the number of juvenile offenders in Montana is increasing is erroneous. It seems to him they since there aren't other systems available today that were used in the past, the juvenile justice system is having to deal with those kids.

REP. JOHNSON then asked Mr. Kiser what increases he saw during his tenure in Billings and how he thinks it should be handled. Mr. Kiser said the Mountain View facility would be sufficient but there would be transportation problems; they would need manpower to bring kids to that school from other areas of the state. It seemed to him they should decide how to handle it in local communities. He said one missing element is having communities where people care about each other and neighbors know each other and help them. They need to have smaller regional areas so they don't have to transport juveniles to a certain facility in the state. He said they must deal with this in a rational way. There seemed to be some immediacy now rather than having the time to "look down the road" and do more studies. This bill should

definitely be researched further and he thought that HB 240 would address some of these problems.

REP. JOHNSON then asked Mr. Hudson about the Aspen Program. Mr. Hudson said the Aspen Program was designed to expand to the highest limit possible the number of kids they can serve within the Mountain View budget.

REP. WISEMAN said he was disturbed by the fact that probation officers knew Rep. Molnar had been working on the bill and did not meet with him to share their concerns. It seemed to him that the whole system is "watching Rome burn" and not doing anything about it. Mr. Meeker answered that he tried to talk to Rep. Molnar about the bill before the session and during the session and he did not respond. CHAIRMAN ZOOK reminded the audience, and Mr. Meeker, that they did have the opportunity to introduce amendments to the bills through someone on the committee. He then asked Mr. Meeker if he had understood him correctly that the numbers of offenders were not increasing as rapidly as everyone thought. Mr. Meeker said he thought the county dealt with about 900 to 1,200 children a year. Some of them are emotionally disturbed and mentally ill and probation officers are dealing with them because they have not received appropriate treatment. He maintained that the total number of youth coming in each year is not increasing dramatically. The children who have gotten themselves in the system will not go away, and will grow up and have children just like them if something isn't done soon.

REP. MARJORIE FISHER, HD 80, Whitefish, said she was working on a victim's rights bill and asked REP. MOLNAR if he had talked to those people involved. They told her they would be happy to work with him on this bill. He said he had not. He said he had worked with the Board of Crime Control and their attorneys. Ms. Wimmer said the Board of Crime Control did not have any attorneys and she doesn't remember REP. MOLNAR calling the Board.

REP. BEVERLY BARNHART, HD 29, Bozeman, referred to the testimony earlier by Mr. Christianson where he said 200 high school students should be somewhere else than the high school. Mr. Meeker thought he had meant 200 from both high schools combined. He works in the same county and has not seen the numbers he was talking about.

REP. MIKE KADAS, HD 66, Missoula, asked Mr. Horsval if there were specific parts of the bill that needed to be redrafted as it seemed there were many problems with it. Mr. Horsval said many sections of the bill were identified by a legislative committee that was organized to conduct audits for the juvenile justice system, but there were many unanswered questions.

{Tape: 3; Side: A; Approx. Counter: 0.1.}

He said there needs to be a system to rewrite the Youth Court Act. There were over 100 organizations identified that they

intended to get input from. The magnitude of that amazed him; there would be so many different interpretations that they felt it would be better to put it on hold and have it studied thoroughly. REP. KADAS agreed with Mr. Horsval and Mr. Meeker that specific issues have resulted on a much broader scale. This bill has a tendency to revert many more responsibilities to the county attorneys and they have told him they have no desire to make decisions on what happens to youth who commit crimes. They want local jurisdictions and justices to make those decisions. The bill also has a tendency to become a mandatory sentencing bill, which no one likes. REP. KADAS said one of the central issues that has come up during questioning is the exponential growth in youth criminality and he wondered if it was really at a crisis point. Mr. Horsval said on a national level, Montana is lower than most 50 states. The main issue that many probation officers and law enforcement personnel are dealing with is the type of kids out there -- much more dramatic cases and more serious crimes. There is time to research and conduct all the proper studies. He suggested that parents should be held more accountable than they are currently.

REP. RED MENAHAN, HD 57, Anaconda, asked REP. MOLNAR if he had worked with any probation officers or law enforcement in his area near Billings instead of putting Mr. Meeker in Helena on the spot. REP. MOLNAR said no, he had just worked with former Rep. Fagg.

Closing by Sponsor:

[Again, it is hard to decipher and understand Rep. Molnar's voice.]

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HEARING ON HB 503

Opening Statement by Sponsor:

REP. CHASE HIBBARD, HD 54, Helena, opened the hearing on HB 503 which revises salaries of state constitutional officials. He said he was embarrassed by the level of salaries that state officials are paid and when he asked if any of them wanted to come to testify on this bill, they all said no. They knew what the job and pay was when they were elected. This bill would raise the pay of six elected officials: the Governor, Lieutenant Governor, Attorney General, State Auditor, Superintendent of Public Instruction and the Secretary of State. In July 1997, the Department of Administration would conduct a salary survey of executive branch officials similar to Montana officials, using North Dakota, South Dakota, Wyoming and Idaho. They will then determine the average salary for a similar position. The fiscal

HOUSE OF REPRESENTATIVES

Appropriations

ROLL CALL

DATE 3-10-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Marj Fisher	✓		
Rep. Don Holland	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson	✓		
Rep. Mike Kadas	✓		
Rep. Betty Lou Kasten	✓		
Rep. Matt McCann	✓		
Rep. Red Menahan	✓		
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0540, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the Montana Youth Court Act

ASSUMPTIONS:

1. The Executive Budget present law base serves as the starting point from which to calculate any fiscal impact due to this proposed legislation.
 2. The primary objectives of the proposed legislation are to clarify parenting roles and responsibilities and to increase youth accountability for actions along an entire continuum of behaviors. The bill will be effective October 1, 1995.
- Montana Board of Crime Control:
3. Montana Board of Crime Control statistics reveal that about 500 youth in 1994 were charged with crimes that would qualify for up to three points. Complete statistics are available only for 1993 when there were 1869 status offenses, such as truancy and false liquor identification; 8185 other offenses, such as misdemeanor theft, city ordinance violations, possession of an intoxicating substance, and 660 more serious transfer offenses.
 4. Repealing 41-5-106, 41-5-310, 41-5-311 and 41-5-809, MCA, would legalize holding juveniles accused of status offenses or adjudicated as status offenders in adult facilities.
 5. This legislation would allow juveniles to be held in adult facilities longer than 24 hours. It is proposed that youth would be physically separated from adults, which would be inconsistent with federal mandates 42 U.S.C. 5633 Sec. 223 State Plans, issued by the Office of Juvenile Justice Delinquency Prevention Act (OJJDP), parts (12A), (13) and (14). The "sight and sound" requirements of state law are deleted by this bill [page 21, line 12].
 6. Montana would not maintain compliance with the OJJDP Act and would lose grant funds of \$612,500 per year, most of which are used to help local governments provide youth services.

Department of Family Services (DFS):

7. DFS plans to serve each year of the 1997 biennium approximately 109 youth in the Youth Alternatives Program and 120 boys in the Pine Hills School (PHS). The capacity at PHS is 80 boys and the average stay is anticipated to be about seven months, resulting in annual service to about 120 boys. During FY94 PHS served 191 males.
8. The bill provides a point system, much like a driver's license point system, wherein a misdemeanor will count as one point and a felony will count as three points. Upon accumulating six points, a youth must be placed in a secure detention facility for five days and upon accumulating nine points, a youth must be placed in a secure detention facility for ten days.
9. After accumulating ten points, a youth would be placed at PHS for no less than 90 days and, if a youth is designated a "predatory youth," placement could be for up to 180 days. This placement is less than the present law base budget of 210 days per youth.

(Continued)

Dave Lewis 3-7-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Brad Molnar
BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0540, third reading

HB 540-#2

(continued)

FISCAL IMPACT:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Department of Corrections & Human Services		
<u>Expenditures:</u>		
FTE	10,44	17,40
Personal Services	309,830	516,384
Operating Expenses	50,000	90,000
Total	359,830	606,384
<u>Funding:</u>		
General Fund (01)	359,830	606,384

Montana Board of Crime ControlRevenue:

OJJDP Block Grant (03)	(320,625)	(427,500)
Title V Grant (03)	(75,000)	(100,000)
Challenge Grant (03)	(85,000)	(85,000)
Total	(480,625)	(612,500)

Department of Family ServicesExpenditures

Operating Costs	492,750	2,452,800
Construction Costs	1,200,000	0
Total	1,692,750	2,452,800

Funding:

General Fund (01)	1,692,750	2,452,800
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Total Net Impact on General Fund Balance:

General Fund (Cost) (01)	(2,052,580)	(3,059,184)
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EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

1. This bill as written will have a major impact on county government costs relative to construction of detention/shelter care beds and associated operating costs for those youth who receive six or nine points.
2. Youth and/or District courts could experience increased expenses due to court-ordered testing under Section 21.

TECHNICAL NOTES:

1. Although Section 24, subsection 17 (Page 36) states that "Health, education, welfare, and other agencies involved with the youth shall ensure that funding for the youth follows the youth to the location in which the youth is placed and that the funding is assigned to the appropriate agency or entity" it is the youth probation officers of the youth courts who use a financial resources checkoff. The District Court or Youth Court judge must order financial resources and these order do not affect and cannot revise AFDC, SSI, child support, school ANB or most other known resources. Treatment funding follows only if the youth is Medicaid eligible and in an approved treatment facility.
2. Section 24, subsection 7 (Page 34, lines 9 and 10) appears to be in conflict with Section 40 (Page 47, lines 18-20).
3. Because some of the terms and provisions in the bill are new and not completely defined, the DFS would require a statement of intent in the bill to enable development of rules for implementation.
4. Page 42, lines 15 and 16, striking the minimum 10 year term will create problems for bond counsel and local governments issuing bonds. This provision needs to be maintained.

(Continued)

Amendments to House Bill No. 540
Third Reading Copy

Requested by Representative Molnar
For the Committee on Appropriations

Prepared by Greg Petesch
March 6, 1995

1. Title, line 5.

Following: line 4

Insert: "REQUIRING THE DEPARTMENT OF FAMILY SERVICES TO DEVELOP A REQUEST FOR PROPOSALS TO SOLICIT PROPOSALS FROM MONTANA LOCAL GOVERNMENTAL UNITS FOR THE SITING OF A YOUTH CORRECTIONAL FACILITY; REQUIRING THE DEPARTMENT TO SOLICIT PROPOSALS ACCORDING TO THE REQUEST; SPECIFYING CERTAIN CRITERIA FOR THE SITE OF THE FACILITY; CREATING A COMMITTEE TO EVALUATE THE PROPOSALS; PROVIDING FOR THE EVALUATION OF THE PROPOSALS AND SELECTION OF A FACILITY SITE; APPROPRIATING MONEY FOR THE PURPOSES OF THE SITE SELECTION COMMITTEE;"

2. Title, line 9.

Following: "MCA;"

Strike: "AND"

3. Title, line 10.

Following: "MCA"

Insert: "; AND PROVIDING EFFECTIVE DATES"

4. Page 47, line 21.

Insert: "NEW SECTION. Section 41. Legislative findings. The legislature finds that the incarceration and management of youthful offenders is a matter of state responsibility and that the location and design of a youth correctional facility providing for these services determines the proper management of those offenders and further finds that it is necessary to provide proper guidelines for the location and construction of the youth correctional facility.

NEW SECTION. Section 42. Definitions. As used in [sections 41 through 47], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of family services provided for in 2-15-2401.

(2) "Facility" means a youth correctional center with a capacity of approximately 50 beds that provides minimum, medium, and maximum security for male youth.

(3) "Local governmental unit" means a county, city, town, or consolidated local government.

(4) "Proposal" means a proposal for the location of the facility, submitted by a local governmental unit to the department in response to the request for proposals required by [section 43].

NEW SECTION. Section 43. Request for proposals. (1) The

(i) proximity to medical services at a referral hospital with 24-hour emergency room service, including the presence of an attending physician;

(ii) proximity to a hospital offering medical specialties needed by youthful inmates;

(iii) proximity to dental services;

(iv) proximity to chemical dependency treatment;

(v) proximity to mental health services, including psychiatric care, clinical services, inpatient and outpatient treatment, and programs appropriate to youth's needs; and

(vi) proximity to vocational education or its programmatic equivalent and a public or private postsecondary educational institution; and

(d) additional criteria, including:

(i) the strength of community volunteer resources;

(ii) the ability of the community's postsecondary educational programs to provide appropriate interns for the facility; and

(iii) the ethnic and cultural diversity of the community.

(3) The department may accept in full or partial compliance with the requirements of subsection (2) information provided to the department pursuant to any similar request for proposals process if that information otherwise satisfies the requirements of subsection (2) and was received by the department no later than January 31, 1996. If the criteria included in the department's original request for proposals for which responses were submitted by January 31, 1996, do not include all the criteria required in subsection (2), the department shall request the additional information from the respondents.

NEW SECTION. Section 44. Site selection committee. (1) Proposals submitted in response to the request for proposals required by [section 43] must be evaluated by a site selection committee. The committee consists of the following persons, whose selection must provide for gender balance on the committee:

(a) one representative of the architecture and engineering division of the department of administration, appointed by the director of the department of administration, to serve in an advisory capacity only;

(b) three representatives of the public, appointed by the governor, none of whom may be a resident of a local governmental unit submitting a proposal;

(c) the youth corrections division administrator of the department;

(d) two members of the house of representatives, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the speaker of the house;

(e) two members of the senate, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the president of the senate;

(f) one representative of established and recognized organizations whose primary mission is specific to youth's needs, appointed by the governor; and

(g) one representative of the criminal justice and corrections advisory council, appointed by the governor.

(2) Except as otherwise provided by [sections 41 through 47], the site selection committee must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122 regarding advisory councils.

(3) The committee shall meet as often as necessary to perform the duties assigned by [sections 41 through 47]. The committee shall consider, evaluate, and select the location for the youth correctional facility according to the procedure and criteria in [section 45].

(4) The committee is attached for administrative purposes only to the department, which shall provide such staff, budgetary, administrative, and clerical services to the committee as the committee or its presiding officer requests.

(5) The committee terminates on the date of the recommendation of a site selection to the 55th legislature.

NEW SECTION. Section 45. Site selection procedure and criteria: (1) The site selection committee may not consider a proposal unless the proposal:

(a) is submitted within the time required by the request for proposals; and

(b) contains the construction site information, service availability information, program information, and additional criteria required by [section 43(2)].

(2) The committee shall determine a maximum numeric value for each of the criteria required in [section 43]. Criteria that the committee determines to be of more relative importance must be awarded a greater maximum value. The committee shall rate each proposal by using a weighted scale process that assigns a numeric score for each criteria and then totals the score for each proposal. The score for each criteria and proposal must be determined by the extent to which each criteria is satisfied, based upon a documented demonstration of:

(a) the proximity, availability, and number of resources satisfying the criteria;

(b) the strength and quality of the resources satisfying the criteria; and

(c) the strength of the community's willingness and ability to provide resources satisfying the criteria.

NEW SECTION. Section 46. Site visitation and hearings required. The site selection committee shall determine the four proposals with the highest numeric scores. The committee shall eliminate the other proposals from further consideration. As soon as possible after elimination of the other sites, the committee shall conduct onsite reviews of the four remaining candidate sites by conducting both an onsite tour of each of the four candidate sites and holding a public hearing on the subject of the facility in the community where each proposed site is located. The purpose of the tour and hearing is to receive information concerning the extent to which each candidate site satisfies the criteria in [section 43] and [section 47(2)]. The hearings must be conducted under procedures determined by the committee, and the committee shall give notice of each hearing by advertisement in a newspaper of general circulation in the county

department shall request that proposals be submitted to the department from local governmental units for the siting, operation, and community support of a new youth correctional facility. The request must:

- (a) be made in the form of a request for proposals;
 - (b) specify January 31, 1996, as the date on which all proposals are to be received by the department; and
 - (c) contain the information required under subsection (2) and other information determined necessary by the department.
- (2) The request for proposals must require that information in the following categories be submitted by a local governmental unit as part of any proposal:

- (a) construction site information, including:
 - (i) the acreage of the site;
 - (ii) the name and address of the owner or owners and the form of the legal interest in which the site is held;
 - (iii) how the site may be acquired by the state;
 - (iv) the configuration and topography of the site;
 - (v) access to paved public streets and reliable utilities, such as water supply, sewage system, natural gas, electricity, telephone, and refuse disposal;
 - (vi) compatibility with current local zoning ordinances, as well as any ordinance modifications necessary and the procedure for making those modifications;
 - (vii) flood hazard information;
 - (viii) subsurface soils analyses and water table location;
 - (ix) climate; and
 - (x) location plan drawings, areawide master plan drawings, and site plan drawings.
- (b) service availability information, including:
 - (i) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour emergency medical services;
 - (ii) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour fire protection services;
 - (iii) proximity, stated in the shortest roadway miles on all-weather roads, to a certified local law enforcement agency and the level of the agency's capability to respond to emergencies;
 - (iv) proximity to, stated in the shortest roadway miles on all-weather roads, and availability of interstate transportation services;
 - (v) proximity to counties committing youth;
 - (vi) the adequacy of the court system and legal services;
 - (vii) availability of motel or hotel accommodations;
 - (viii) an adequate number of vendors of food, motor fuel, and other supplies;
 - (ix) an adequate skilled workforce for employment in the facility;
 - (x) availability of affordable housing for the facility staff;
 - (xi) established organizations whose primary missions are specific to the needs of youth; and
 - (xii) established organizations that emphasize and are concerned with Native American issues;
- (c) program information, including:

of each candidate site.

NEW SECTION. Section 47. Site selection. (1) After completing the onsite reviews required by [section 46], the committee shall again score each of the four candidate sites by applying the criteria and scoring method provided in [section 45].

(2) If two or more proposals receive the same total score, the committee shall determine the leading proposal by assigning maximum point values for and scoring those proposals on the following criteria for the community in which the facility would be located:

(a) strength of community volunteer resources;

(b) ability of the community's postsecondary educational programs to provide appropriate interns for the facility; and

(c) the ethnic and cultural diversity of the community.

(3) The facility must be recommended for location at the site proposed by the local governmental unit whose proposal receives the highest numeric score using the procedure provided in this section. Upon selection of the best proposal by the committee, the committee shall inform the director of the department of its selection. The director shall review the selection process to ensure that the committee has not made an error in process or in fact. If the director determines that an error has been made, the director shall remand the recommendation to the committee for further evaluation. The director shall make a public announcement of the committee's selection upon determining that no errors have been made. The director shall prepare the committee's selection for recommendation to the 55th legislature.

NEW SECTION. Section 48. Appropriation. There is appropriated from the general fund \$8,000 to the department of family services for the purposes of the site selection committee created by [section 44]."

Renumber: subsequent section

5. Page 47, line 24.

Insert: "NEW SECTION. Section 50. Effective dates. (1)

[Sections 1 through 40 and 49] are effective October 1, 1995.

(2) [Sections 41 through 48 and this section] are effective July 1, 1995."

EXHIBIT 9
DATE 3-10-95
HB 540

Amendments to House Bill No. 540
Third Reading (blue) Copy

Requested by Rep. Molnar
For the Committee on Appropriations

Prepared by John MacMaster
March 8, 1995

1. Title, line 4.

Following: " ; "

Insert: "PROVIDING APPROPRIATIONS ; "

2. Title, line 9.

Following: "52-5-129 , "

Insert: "AND"

Strike: "AND 53-21-506 , "

3. Page 36, line 3.

Strike: first "must"

Insert: "may"

Strike: "designated"

Insert: "adjudicated"

Strike: second "must"

4. Page 36, line 4.

Strike: "be"

Strike: "a state youth correctional facility for no less than 90 days"

Insert: "the custody of the department"

5. Page 39, line 27.

Strike: first "not"

Strike: "and"

Insert: "but"

6. Page 47, lines 17 through 20.

Strike: section 40 its entirety

Re-number: subsequent section

7. Page 47, line 24.

Insert: "NEW SECTION. Section 41. Appropriations. (1) There is appropriated from the general fund \$1 million to the board of crime control for distribution by the board to counties on a pro rata basis based on each county's percentage of the total number of persons adjudicated as delinquent or in need of supervision in the state, to be used by the counties to implement [this act].
(2) There is appropriated from the general fund \$1 million to the department of family services to be used to implement [this act]."

EXHIBIT 10
DATE 3-10-95
HB 540

~~AMM~~ Amendments to HB 540
Third Reading Copy (Blue) /V

1. Page 36, line 19.

Following: "entity."

Insert: "The youth court shall order the agencies to comply with this provision, after determining the sources and amounts of such funding. Upon receipt of a completed application for services, the assignment to and collection of funding to the appropriate agency or entity shall be enforced by the Department of Social and Rehabilitation Services through any remedy available to the department for the collection of child support."

EXHIBIT 11
DATE 3-10-95
HB 540

City & State, April 26, 1993

Stalling repeat youth offenders

Program aids city agencies cooperate

By GARY ENOS
Staff Writer

Ask several agencies dealing with a city's troubled juveniles to identify their most violence-prone youths, and chances are the same names will appear on every list.

That's the basic but often-ignored theory Robert Heck of the U.S. Department of Justice used to create a program that has helped communities stem violence by targeting their worst juvenile offenders.

Created in 1982, the Serious Habitual Offender Comprehensive Action

"Our assistant police chief at the time got us started," recalled David Keith, crime analysis manager in the Oxnard Police Department. "He used to say that before this happened, he didn't even know the name of the juvenile court judge in Ventura County."

Some cities' agencies were under the mistaken impression that federal statutes on the confidentiality of youth records barred departments from comparing notes. "The perception far outran the actual legal constraints," Mr. Heck said.

Mr. Heck's belief that an "elite" cadre of offenders accounted for most of a city's violent youth crime proved correct.

In most cities, about 25 youths per 100,000 over-all population were found to be committing the majority of the violent offenses. Mr. Heck believes those numbers would be as

'I sincerely felt there were very few seriously involved juveniles who were responsible for a great deal of the juvenile

Juveniles

Continued from Page 9
offenders once they were identified.

"We were just saying it was important for people to have all the available information before them when dealing with these youths," Mr. Heck insisted. "Nothing in the program said you should lock up people for life or hang them by their thumbs."

The program's test cities heard the same arguments Mr. Heck did, so many reformed other elements of their juvenile-justice system.

In Colorado Springs, which has received a total of \$452,000 in SIO-CAP money since 1983, officials called for an end to housing violent youth offenders and runaways in the same facilities, said Emily Kline, crime analysis supervisor in the Colorado Springs Police Department.

Brad McNair - Soft Questioning you said that this is a common problem
Within the past 4 hrs how often have you dealt with this
YOUTH COURT REVISION 2) Step 2: correct DATE 3-10-95
Richard D. Recor, Ph.D. domestic abuse because of
Licensed Psychologist his 16 yo step son
Mother doesn't know what she is doing
3) 36 yo old repeat offender since early adolescence
Nothing has happened him as a teenager

This testimony is presented in support of suggested revisions to the Youth Court Act. As a clinical psychologist licensed to practice in Oklahoma, Virginia, California and Montana, with over 17 years of experience with youth in a wide variety of treatment settings, I have found the current juvenile system to be seriously lacking in three distinct areas.

* Immediacy of response is essential. With the decreased utilization of psychiatric hospital beds and an increase utilization of existing youth detention beds, parents and community members are having to take immediate action to protect themselves from aggressive and out of control children and adolescents. The children currently being admitted to psychiatric hospitals are not only more serious, but require a high degree of external control provided by the physical environment and by large numbers of staff. Hospital stays are decreasing and children are returned back to the home environment in a very short period of time. Either immediate response by community agents and/or available temporary placement facilities are needed. The current centers are many times busy and cannot be responsive to these demands.

* Empowerment of parents is necessary. Extreme situations requiring restraints and/or action designed to protect self and/or others should not be considered as child abuse. Parents should be allowed to administer medical procedures as deemed medically necessary by a physician and/or court approved designee. This is especially true in children who have impulse disorders such as Bipolar Disorder and Attention Deficit Disorders. Most significant are those children who have a dual emotional and conduct disorder. Having been a Montana psychiatric hospital administrator in the past, I have had the opportunity to see many of these youthful offenders who have a severe emotional disturbance but do not quite belong in either institution. Since many of these individuals are returned back to the home setting in a very rapid fashion the parents again are having to deal with the responsibility of managing extreme situations with very little authority to manage them.

* Placement in adult centers is needed. the facilities for temporarily holding juveniles are extremely limited. Keeping in line with the intent of the law, juveniles should be kept physically separate, yet should be able to use existing facilities that house adults. As long as these facilities are immediately available and no adults are within the physical area where the juvenile is kept, then they should be allowed to be temporarily housed, rather than placing the juvenile in an unsafe environment.

The essence of my testimony is that juveniles must be given immediate and consistent consequences for their behavior, both positive and negative, by social agents. Parents should be considered as primary behavioral change agents empowered to take reasonable action to provide the structure that is necessary to create a feeling of safety for children and other family members. Please put some teeth into the law so that juveniles will know that there are consequences to their behavior.



Garberson Clinic

2200 Box Elder
Miles City, Montana 59301

406-232-0790
Fax 406-232-0799

A member of the Presentation Health System
Sponsored by the Presentation Sisters

TO: The House Appropriations Committee
ATTENTION: Representative Brad Molnar

FROM: F. Tom Peterson, Ed.D., Licensed Psychologist

REGARDING: House Bill 540

I am truly sorry that I am unable to attend your committee hearing on the above referenced proposed legislation scheduled for this coming Thursday.

Please be advised that I am in support of HB 540 both as a provider of psychological services and as a parent of six children.

Since 1962 I have worked with children. I spent 13 years as an educator, before securing my doctorate in psychology in 1971. Since that time I have instructed those training to be service providers while providing direct services as both a school psychologist and a clinical psychologist. Over the past 18 years I have provided therapeutic intervention to youth of all ages. I have experienced working with youth and families in crisis in about every situation imaginable. It is my personal and professional opinion that logical consequences consistent with aberrant and inappropriate behavior is in the best interest of youth, families and society.

Thank you for your attention to my position.

Sincerely,

F. Tom Peterson Ed.D.

F. Tom Peterson Ed.D.

Licensed Psychologist/Certified School Psychologist

Family Practice

Edwin L. Stinson, M.D., AB.M.H.
Glen M. Shofani, M.D., AB.F.P.
John C. Robinson, M.D., AB.F.P.

Internal Medicine

Stephen J. Nalewaja, M.D., AB.I.M.
A. Lewis Varheim, M.D., F.A.C.S.M.
Malcolm D. Winter, M.D.

Audiology and Speech

Lynn Harris, M.A., CCC SP/A

Radiology Consultants

Arthur E. Fitz, M.D., Radiologist
Mark N. Irion, M.D., Radiologist

Ophthalmology

Marta H. King, M.D., F.A.A.O.
Garberson Eye Clinic
2000 Clark St. P.O. Box 1764

Clinical Psychology

F. Tom Peterson, Ed. D.

Physician Assistants - Certified

Scott W. Barry, PA-C
Wayne C. Cure, PA-C
Marta F. Maffey, PA-C
Larry D. Walker, PA-C

General Surgery

Thomas F. Boeson, M.D., F.A.C.S.
J. Robert Grieson, M.D., F.A.C.S.

Orthopedics

Daniel C. Brocke, M.D.
James E. Linderman, PA-C

Sports Medicine

Otolaryngology

James E. Linderman, M.D., F.A.C.S.

PARI LE COURE

**1119 Lincolnwood
Missoula, MT. 59802
406-3649**

ATTENTION: To all Republicans;

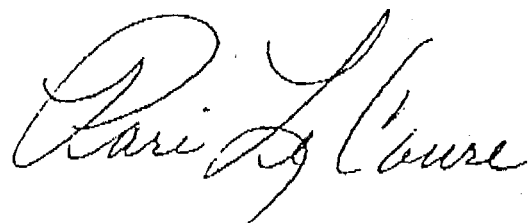
I am writing in support of HB 340, sponsored by Brad Molnar. It has been brought to my attention that various mental health groups and other social services are opposed to a bill because it is too drastic. I would like to state as a victim of crime, as a mother to adults who were teenagers and grade school children who will be teenagers, that the passing of this bill is important.

Most of our incarcerated did not grow up and then decide to break the law, the crimes began when they were young for various reasons. My own daughter who was drinking during her teens was picked up and released several times for "partying", it was said she committed no crime?! I have a school friend who was caught drinking and driving many times and was repeatedly released until he at the age of 21, hit yet another car and killed one of the passengers. He spent his "time" taking college courses and by having it as he said "pretty easy", while the family of the victim is still suffering the loss of thier Mother and Wife. Statistically, criminals are youth offenders first. It just makes sense, that if we have such broken down family values, that our courts need to make our youth accountable for thier actions at a young age, to off set the continuing lack of respect and responsibility our problem youth seem to pride themselves in.

Let's go one step further, the vagueness of which we now define mental illness would suggest that just about everyone of us comes from a dysfunctional family. I have a very dysfunctional family, filled with alcohol abuse and the results of that abuse. Yet, I know that killing or assulting someone is wrong, and would expect to be held accountable for it. If our youth had always been held accountable, I would probably still have my nephew who was murdered in 1989 and my dearest brother whom I raised and loved only to have him murdered in 1992. This is the hard truth of the lacking in our system relating to "accountability and responsibility" for our youth and our adult offenders. We're are not just looking at kids experimenting anymore, youth crime has increased 50% in the last decade and violent crimes from our youth are in growing numbers every year. Can we afford not to address youth offenders before the age of 18? Will our prisons be large enough, just in case these youth offenders don't grow out of "experimenting" with criminal actions.

I have enclosed a well written editorial from the Missoulian Staff, please help in redefining youth responsibility. Putting together a new effective Youth Court System, and probationary staff to streamline the rising percentages in youth crime.

Pari Le Coure..1119 Lincolnwood, Missoula, MT. 59802 543-3649



BOB AND ARLEE RILEY
100 TROUTBECK ROAD
P.O. BOX 213
LAKESIDE, MT 59922

2/21/95

Rep. Brad Molnar
Legislature
State Capitol
Helena, Mt. 59620

Dear Mr. Molnar:

I am fully in accord with
your HB 540, but think it
didn't go far enough.

Please require the publication
of all juvenile offender's names
their offense, and the
names of their parents.

This might influence ~~off~~
little more ~~responsibility~~
responsibility on the part of
parents.

Sincerely yours,

Bob Riley

Rep. Molnar

Keep on Keeping On!

It's an outrage, that the monies put out by govt. can't be used for the child at the the place of need.

We need to rust every one of these Demoreates and get something that works

this book could be very helpful to this Cause

Pauline Adamson
P.O. Box 121
Red Lodge, MT
59068

FAX 1-900-225-1600

Rep Brad Molnar

Re: HB540

Dear Mr Molnar

As a concerned resident of Montana I
in complete agreement with your HB540. As
you outline in your bill we must make our
young people accountable for their action.

Our state has laws affecting all of its
citizens and are penalized when they
break our laws, but not our youth! They
have no fear of discipline or accountability.

I am of the opinion that our youth are on
the verge of being totally out of control
unless we take steps now! No more
study's, no more chances, no more bleeding
heart's, it's time to stop the nonsense, and
the defiance of these young people.

Please let me know how I can assist you in
your endeavors with HB540.

HM PH- 406-656-1871

OFF PH- 406-248-7771

HM FAX- 406-656-1871

Sharon Robinson

4408 Pine Cone Rd

Billings, Mont 59106

Self - Self

#13 590

Anno Hanno
5th Ave
Laurel, Md

Dear Brad - from Ann
Hanna - Change the law
of protecting all under 18 years
of age of being so protected -
Their names along w/ parents
names should be publicized
like everyone else's name if
they vandalize, burglarize,
Criminalize or any other "ise"
it should be made public along
w/ names of their parents - stop
protecting the guilty!!! they are
parents, are responsible for
proper action of their kids - as
of today - Feb 11 - #13 1990 -

Vandals have broken into my
building on my land at 530 Pier
Ave - Laurel, Md - Right now at
10:15 a.m. - Feb 11th - in my building
are the following articles - Don't
know who they belong too - 2 electric
heaters, 2 sleeping bags, a TV, several
cords & adapters, a trouble lite
w/ bulb, an orange outside extension
cord (30-50 ft long) which is plugged
into my neighbors garage out
let - giving the culprits power for
heaters as well as lites. also
Area Carpet, foam rubber
mattress, a turn table, a broke
function box ???!!! they
broke & etc to get into building - other

times too - Vandals (probably all same ones) have broken into this building - Last fall they tried entering my "bug out" basement - tore out windows broke glass - broke pakes off house - tore off ^{partially} heavy screen off garage window - Broken into above mentioned building 2 X's before - Cops hands are tied becu of present law - protectors under age kids!!! they continue Confessate the looter my building Change that law!!! stop protecting the under age Criminals - for they are free to do damages still be protected while doing so - make them pay & be responsisble for all their actions - too - like you & me - I want action - please please You can change that law - repeal it - now - this legislature!! says

Ann Hanna

I'm tired of living in fear - I'm a widow & want I need security - I pay taxes for protection too - I fear me - I fear my & others - Cries - for there are many in agreement w/ me - Hope they have written you by now -

February 24, 1995

Representative Brad Molnar
State Capitol
Capitol Station
Helena, Mt. 59620

Mr. Molnar,

After reading, in the Missoulian, the on going debate over the handling of criminal juveniles in the state, I felt I had to comment to Rep. Elliott, Rep. Wyatt, and Rep. Shea about their views.

I want to thank you for sponsoring bill concerning the treatment of juvenile criminals as adults. It should have been done along time ago, especially in some cases. Some of these Pine Hills alumni are nothing more than hard core hoods, who just happen to be the ages up to 18. These juveniles are also 6 foot 2 inches, and 220 pounds, with the very capable knowledge of the legal system. They are afraid of very little, and are never really held responsible for the damage they do to property or person. They don't care. I can't help but feel that, faced with real punishment, this might deter some of the juveniles from starting in the first place.

I was also glad to see the editorial in the Missoulian, February 22, 1995. It stated the juvenile criminal problem simply, and to the point. Alot of taxpayers are fed up, and want something done to protect the public, and the victims.

Thank you.

Sincerely,
Linda Airhart
Box 178
Plains, Mt. 59859



MONTANA YOUTH HOMES, INC.

P.O. Box 153 • Helena, MT 59624
(406) 449-3038

EXHIBIT 13

DATE 3-10-95

HB 540

Margaret Stuart Shelter

Last Chance Youth Home

Achievement Place

TO: House Appropriation Committee
FROM: Jan Shaw, Executive Director
Montana Youth Homes
RE: HB 540

Montana Youth Homes is a non profit organization which operates programs for teens who are in need of supervision or in need of care. We are a private agency governed by a volunteer Board of Directors. One of our programs is a Shelter Home which is licensed for twelve youth and provides care, supervision, along with room and board in a homelike environment. The Margaret Stuart Shelter is one of six shelter homes throughout the State of Montana. These shelters are non secure facilities and for children who do not constitute a danger to themselves or to the community.

Our Board of Directors is very concerned regarding a change of definition of shelter homes as presented in HB 540 "(10) "Detention means a shelter care facility or a physically restricting facility designed to prevent a youth from departing at will and approved by the Board of County Commissioners of the county in which the facility is located."

If passed, this bill would eliminate shelter services to over 100 kids in our shelter alone. Is the legislature willing to build new facilities for abused and neglected teens? The bill states that it would be illegal to mix juvenile offenders with youth in need of care. The truth of the matter is that many of the youthful offenders have also been abused and neglected, and are in need of the same services offered to youth in care.

The shelters take kids from across the state. Would each shelter need to be approved by board of county commissioners in every county across the state? Would licensing and contracts currently issued by the state then become the responsibility of each county?

The Board of Directors of the Montana Youth Homes strongly urge the committee to review and study HB540 further in order to address all of the ramifications, and whether this bill truly meets the needs of both the juvenile offender and youth in need of care.



Mental Health Association of Montana

An Affiliate of the National Mental Health Association

State Headquarters • 555 Fuller Avenue • Helena, Montana 59601
(406) 442-4276 • Toll-Free 1-800-823-MHAM • Fax (406) 442-4276

EXHIBIT 14
DATE 3-10-95
HB 540

Testimony of David Hemion
House Appropriations Committee - HB 540
March 10, 1995

On behalf of the 1,200 members of the Mental Health Association of Montana, we ask that HB 540 be disapproved. There are many problems with this bill, among them several adversely affecting the treatment of mentally ill children. We are opposed to HB 540 for these reasons:

1. Sec. 24 (page 32) revises the disposition, placement and evaluation of youth. Under current law, a court cannot commit children who have mental illnesses to a state correctional facility. Consequently, those facilities are not prepared to provide psychiatric treatment to children with mental illnesses. HB 540 would allow children with mental illnesses to be placed in correctional facilities. They would be moved to a treatment facility for their mental illness only if the youth has "a mental disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or unable to conform the youth's behavior to the requirements of law".

We assume by the test put forward by this revision that children with mental illnesses who are able to appreciate the criminality of an act would be sent to a correctional facility. What happens, then, to treat these children for their illnesses? How will the state provide this treatment in a correctional setting? Please remember that many of these children are victims of terrible physical, sexual or emotional abuse. They may well know that they have broken the law, but that in no way begins to address their needs for treatment.

2. Sec. 24 (page 29) would allow children to be evaluated at Montana State Hospital and Sec. 40 (page 47) would allow commitments to MSH of children charged with offenses. The hospital has not accepted children for many years. This will require segregation of children from other forensic patients to prevent harm to these children and specialized medical treatment. Also remember that this week you authorized the use of facilities on this same campus for incarceration of adult felons.

3. Sec. 24 (page 36) would prohibit children placed in correctional facilities from being moved to a residential facility for treatment of their mental illnesses until they are "willing to accept treatment" and have served half of their "imposed detention". Montana doesn't treat its adult prison population this way. Why would we needlessly withhold treatment to our children with mental illnesses?

4. Sec. 39 (pages 45-46) has nothing whatsoever to do with revising the Youth Court Act. It removes basic rights of patients in mental health facilities and the authority of the Department of Corrections and Human Services to provide guardianships for patients. It is complete contradiction of HB 41, which establishes a careful procedure for involuntarily medicating patients.

5. The presumption of HB 540 is that Montana's Youth Court Act requires revising. HB 240 addresses this need and provides a well thought out process for this purpose. The House has approved this measure and we encourage its enactment.



EXHIBIT 15
DATE 3-10-95
HB 540
MONTANA STATE CHAPTER

National Association of Social Workers

555 Fuller Avenue

Helena, MT 59601

(406) 449-6208

3/10/95

Members of the House Appropriations Committee,

On behalf of the Montana chapter of the National Association of Social Workers, I rise in opposition to HB 540. As with other Mental Health professions, social work has evolved over the past few decades in both the scope and depth of practice. In concept, it appears that some of the general provisions of HB 540 reflect what in fact is recognized as part of appropriate treatment plans for troubled youth. Restitution for harm done and experiencing the consequences of one's behavior are certainly necessary in most cases to achieve successful outcomes in treatment of some behavioral disorders. "Tough love" has its definite and necessary application in treatment.

However, HB 540 has provisions that are so broadly defined, it is difficult to determine what the new boundaries are and the responsibilities that parents and youth must have, can have, and sadly but realistically, can and will abuse. Of immediate concern are three key issues.

1) In section 3 of the bill, on page 7 lines 1 through 3. This wording is disturbing, since much of the provisions are already covered in statute (self defense, protecting the child from self harm) but they appear to be *extreme* provisions. What does extreme reactions include? What are the *extreme circumstances* referred to and how did they arise? What does *normal* physical consequences of one's actions mean? Who are to make these judgments; mandated reporters, child abuse investigators, law enforcement? How would this clause affect efforts in the prevention of child abuse and neglect?

Our concern is that we already have very limited and *decreasing* resources dedicated to the prevention of child abuse. This clause may actually increase the burden of investigations to determine what is abuse and what is appropriate under vaguely defined statute.

2) Spending funds to incarcerate youth while at the same time reducing funds to treat youth is regressive. We certainly need both. But there are less resources dedicated to preventing our children from entering the youth justice system this session. Why are we investing at the more expensive end of the spectrum of youth care? It may seem to be a useful application of appropriate consequences to encourage youth to accept treatment by incarcerating them. But what happens to these youth, after they agree to receive treatment, when we have inadequate resources to treat them?

3) Why was a bill of this importance, and radical affect on the youth court system, left to be deliberated upon so late in the session? (LC 1158 I) Who was included in the development of this bill? Were law enforcement officials, school officials, county attorneys, county commissioners, or parents groups included? Social workers would have appreciated the opportunity to have been included in the development of such a major piece of legislation. Yet we were not.

HB 240 which proposes to study wholesale changes like this bill attempts to do was LC number 254. We support the principals in that bill. HB 380 was LC number 996. It made some necessary changes to the youth court act along the lines of some of the concepts in HB 540.

Please table HB 540, it is an unnecessary risk to take when other bills are already addressing the issues contained there more deliberately and conservatively. Thank you for allowing this testimony, I am

EXHIBIT 16
DATE 3-10-95
HB 540

Policy Number: 89-1401
Date: April 1989
Issue: Jail removal exceptions
Policy: There are three (3) exceptions to the scope of Section 223(a)(14) as follows:

Exception 1:

OJJDP regulations implement a statutory exception allowing the temporary detention in adult jails/lockups of juveniles accused of nonstatus offenses who are awaiting an initial court appearance. An accused criminal-type offender can be detained for up to 24 hours in an adult jail or lockup if:

- a. the geographical area is certified by OJJDP as non-MSA; and
- b. the state has an enforceable 24-hour initial court appearance requirement for detained juveniles (for a detention or probable cause determination). Either the juvenile or his legal representative must personally appear (ex parte orders do not satisfy the requirement); and
- c. a determination is made that there is no existing acceptable alternative placement available; and
- d. the facility provides sight and sound separation.

As currently stated in the JJDP Act, this exception expires in 1989.

Exception 2:

If criminal felony charges have been filed against the juvenile in a court exercising criminal jurisdiction, then the juvenile can be detained in an adult jail or lockup.

Exception 3:

For the purpose of monitoring compliance with Section 223(a)(14), OJJDP has adopted a "6-hour" grace period which would permit the secure detention in an adult jail or lockup of those juveniles accused of committing criminal-type offenses (i.e., offenses which would be a crime if committed by an adult). This six hours is limited to temporary holding for the purposes of identification, processing, release to parent(s) or guardian(s), or transfer to juvenile court officials or juvenile shelter or detention facilities. Any such holding of juveniles should be limited to the absolute minimum time necessary to complete this action, not to exceed six hours, but in no case overnight. Section 223(a)(13) would prohibit such accused juvenile criminal-type offenders from having regular contact with adult offenders during this brief holding period. A status offender or nonoffender cannot be securely detained, even temporarily, in an adult jail or lockup.

(cont.)

Policy Number: 89-1401 (cont.)

Adjudicated delinquents may not be held for any length of time in adult jails or lockups, e.g., as a disposition, or while awaiting transfer to a juvenile correctional facility.

References: Section 223(a)(14), JJDP Act.

Section 31.303, Formula Grants Regulation, Federal Register, June 1985.

Proposed Criteria for Defining Adult Lockups, Federal Register, January 1988.

Legal Opinion Letter to Idaho, August 30, 1979.

Legal Opinion, May 23, 1983.

Legal Memorandum, June 25, 1985.

Legal Memorandum, September 19, 1985.

OJJDP Letter to Florida, February 10, 1986.

Policy Number: 89-1301

Date: April 1989

Issue: Separation

Policy: OJJDP discourages the placement of any youth in a facility which can be used for the detention and confinement of adult criminal offenders. However, minimal and acceptable separation for monitoring purposes of Section 223(a)(13) means that juvenile offenders and adult criminal offenders cannot see each other and no conversation is possible. This is commonly referred to as "sight and sound" separation and must be accomplished in the areas which include, but are not limited to admissions, sleeping, toilet and shower, dining, recreational, educational, vocational, transportation, health care and other areas as appropriate. This separation may be established through architectural design or time phasing the use of an area to prohibit simultaneous use by juveniles and adults.

Separation from adult offenders includes trustees.

A juvenile who has been transferred or waived or is otherwise under the jurisdiction of a criminal court does not have to be separated from adult criminal offenders pursuant to the requirements of Section 223(a)(13). Such juveniles may also, however, be incarcerated with other juveniles who are under the jurisdiction of a juvenile court?

This is because Section 223(a)(13) prohibits regular contact in institutions between two specific groups or categories of persons. The first is juveniles alleged to be or found to be delinquent, status offenders, and nonoffenders. The second is adult persons incarcerated because they have been convicted of a crime or are waiting trial on criminal charges.

Juveniles waived or transferred to criminal court are members of neither group or category subject to the Section 223(a)(13) prohibition. Therefore, such juveniles may be detained or confined in institutions where they have regular contact with either group or category covered by the prohibition. They are a "swing group" of individuals who can be placed with whomever the legislature or courts deem appropriate.

For purposes of monitoring compliance with Section 223(a)(13), separation is not required in nonsecure, community-based programs or facilities.

References: Section 223(a)(13), JJDP Act.

Section 31.303, Formula Grants Regulation, Federal Register, June 1985.

Legal Opinion No. 77-9, December 1, 1976.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Appropriations COMMITTEE BILL NO. HB 440
 DATE 3/10/95 SPONSOR(S) 540

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
CANLE BOYER	Parents	540		X
Andree Larosa	Montana Advocacy Program	540	X	
Bill J. Maeker	Juv. Prob.	540	X	X
Candice Wommier	MBCC	540	✓	
Larry Fashender	Cascade Cty	540	✓	
Nancy McAffee	PSC HB 523			
Gene Kison	MBCC	540	✓	
Shirley Juhl	Missoula Co Board of Realtors	HB 422		✓
Gerard Bove	Missoula TAT Dyer	HB 422		✓
DENNIS BURR	MONTANA Taxpayers ASSOC	HB 503		✓
Leanne Young	Msia. self/licensed Pa. Counselor	HB 540	X	
Charles R Brooks	B, Hinge Chamber	HB 503		✓
Jim Twitwiler	MT CHAMBER	HB 503		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Jerry Driscoll

mt State Bulldozer

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

COMMITTEE _____

BILL NO. _____

DATE _____

SPONSOR(S) _____

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NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Deborah Smith	Sierra Club	440	✓	
Donna Thompson			✓	146
Jim Leiter	MONTANA Solid Waste Contractors Assn	440	✓	
Janie Petaja	Self	540		✓
Janet Ellis	MT Audubon	440	✓	
J.V. Bennett	Mont PIRG	440	✓	
David Gatz	Youth Puberty ^{Gillett}	540	✓	
WAYNE STAHL	PHILLIPS County	540	✓	
JACK HAYNE	SELF			✓
Paul Henderson	SELF	440		✓
SHARON HOFF	MT CATHOLIC CONF	540	✓	
Pete Joseph	MT FT			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

COMMITTEE _____

BILL NO. _____

DATE _____ SPONSOR(S) _____

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PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
DAITH BARNARD	N. MONTANA AGAINST TOXIC DRUGS	440	✓	
Melissa Case	Montanans for a Healthy Future	440	✓	
Ellie Arguimbau	self	440	✓	
Roger Thorvilson	MT DNES, WMD	440		
Jim Wilkin, Helena	Self	440	✓	
Wade Sikorski	Self	440	✓	
Jon Dillman	MT DNES WMD	440		
Craig Anderson	Ag. Gen. Dist. Youth Ctr.	540	✓	
Brian Lockhill	MHS	485		✓
Mark Sommer	Mont. Hyg. Society	485		✓
Tracy Sheff	MT Hist. Society	485		✓
Alisa Henneman	MT Psych Assoc.	540	✓	
Blake Wordal	Lewis & Clark Co.	540	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

Appropriations COMMITTEE BILL NO. AB440
 DATE 3-10-95 SPONSOR(S) AB540
8:00am

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Mary ELLERD	IMJFOA	540	✓	
HAROLD L. MERCER	RICHLAND Co. REFUSE DISTRICT	440	✓	
Howard W. Gipe	Fleisher County	540	✓	
Terrey Criner	Lincoln County	540	✓	
Jan Shaw	Montana Youth Center	540	✓	
Allen C. Bonfatti	Rawlley Co. Commissioner	540	✓	
Harvey Kaler	Mont. Rural Water	440	✓	
Bill Rappold	Bondara Co.	440	✓	
James Emerson	Helena	440	✓	
Mark Watson	City of Billings	440		✓
Anne Hideoys	MEIC	440	✓	
GEORGE OCHENSKI	WASTE MGMT MONT.	440	✓	
David Henning	MT ASSOC OF CHURCHES MENTAL HEALTH ASSOC.	540	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
 ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON APPROPRIATIONS

Call to Order: By **CHAIRMAN TOM ZOOK**, on March 21, 1995, at 9:00 a.m.

ROLL CALL

Members Present:

Rep. Tom Zook, Chairman (R)
Rep. Edward J. "Ed" Grady, Vice Chairman (Majority) (R)
Rep. Joe Quilici, Vice Chairman (Minority) (D)
Rep. Beverly Barnhart (D)
Rep. Ernest Bergsagel (R)
Rep. John Cobb (R)
Rep. Roger Debruycker (R)
Rep. Gary Feland (R)
Rep. Marjorie I. Fisher (R)
Rep. Don Holland (R)
Rep. Royal C. Johnson (R)
Rep. John Johnson (D)
Rep. Mike Kadas (D)
Rep. Betty Lou Kasten (R)
Rep. Matt McCann (D)
Rep. William T. "Red" Menahan (D)
Rep. Steve Vick (R)
Rep. William R. Wiseman (R)

Members Excused: None.

Members Absent: None.

Staff Present: Clayton Schenck, Legislative Fiscal Analyst
Marjorie Peterson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 605
Executive Action: **TABLED:** HB 13, HB 143, HB 224, HB 266,
HB 447, HB 471, HB 519, HB 528, HB 579,
HB 592;
DO PASS AS AMENDED: HB 189, HB 365,
HB 378, HB 540, HB 576, HB 605;
DO PASS: HB 493

Motion: REP. COBB MOVED THE FIRST PAGE OF THE OBPP AMENDMENT ADDING HIS AMENDMENT AT THE BOTTOM OF THE PAGE: ... "significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred."

Motion/Vote: REP. ROYAL JOHNSON MOVED A SUBSTITUTE MOTION TO ADOPT THE OBPP AMENDMENT WITHOUT THE COBB AMENDMENT. Substitute motion failed 6 - 12, with REPS. ROYAL JOHNSON, FISHER, WISEMAN, VICK, KASTEN and GRADY voting yes.

Motion/Vote: REP. ROYAL JOHNSON MOVED A SUBSTITUTE MOTION THAT HB 576 OBPP AMENDMENT, PAGE 1, WITHOUT COBB'S AMENDMENT ADDED DO PASS. Substitute motion failed 5 - 12, with REPS. ROYAL JOHNSON, FISHER, WISEMAN, QUILICI, and VICK voting yes.

Motion/Vote: REP. COBB MOVED THAT HB 576 OBPP AMENDMENT, PAGE 1, WITH HIS AMENDMENT ADDED DO PASS. Motion carried unanimously.

Motion/Vote: REP. COBB MOVED HB 576 DO PASS AS AMENDED. Motion carried 16 - 2, with REPS. KASTEN and DEBRUYCKER voting no.

{Tape: 2; Side: B; Approx. Counter: 9.6.}

EXECUTIVE ACTION ON HB 540

Motion: REP. VICK MOVED HB 540 DO PASS AS AMENDED.

Discussion: REP. KASTEN discussed Amendment HB054003.AGP and the changes that were involved. First of all, the legislative council worked very hard to get these amendments written because REP. MOLNAR kept changing his mind. On page 2 of her amendment, after #18, there should be another amendment which deletes Section 22. She said the mission of the bill was saved. In essence, this amendment is in agreement with the Department of Family Services and the Board of Crime Control and takes out all the money, so there is no fiscal note any longer. CHAIRMAN ZOOK asked if it left in Section 7 and it did.

Vote: Motion that HB 540 Kasten Amendments Do Pass carried 17 - 1, with REP. DEBRUYCKER voting no.

Motion: REP. VICK MOVED HB 540 MOLNAR AMENDMENTS DO PASS.

Discussion: REP. MOLNAR said this amendment doesn't interfere with the amendments just passed. This amendment requires the department to develop an RFP (Request for Proposals) from local government for a youth correctional facility. REP. KASTEN hesitates to speak for the whole group she met with, but this amendment was passed out earlier at the hearing and she did not get one single supportive comment. It was not considered and she is reluctant to put it on the bill as she doesn't know what the ramifications would be. Al Davis, Juvenile Corrections Division, Department of Family Services, has no objections to this amendment. REP. VICK summarized that it just deals with site selections, RFPs, and procedures and criteria, and appropriates \$8,000 to DFS for the site selection committee. REP. KASTEN said it would be better to wait for the study before deciding how, why and where to put the facility. Mr. Davis agreed. A 50-bed facility would be adding another whole correctional facility to what they have already in the state and is a fairly major shift in plans. The director of DFS and Corrections would probably want to be involved in this issue. REP. KASTEN said since there was an 11-member committee assigned to do this she wasn't sure the \$8,000 be sufficient for the study. Mr. Davis agreed. He said this committee, as well as the RFP, would be somewhat similar those used with the women's correctional facility and the appropriation for that study was \$50,000. The \$8,000 would not even cover costs. REP. FISHER reminded everyone that if this bill suggests to build another facility, that REP. BERGSAGEL should have that in his Long-Range Building proposals. She opposes the amendment. REP. BERGSAGEL added that the site selection committee costs would probably be about \$12,000 just for the expenses of the committee. REP. VICK asked if there were any requirements in the RFP that would prohibit the committee from adding 50 beds to an existing facility, such as Pine Hills School. Mr. Davis thought that one of the areas in question for study was relative to privatization of existing state facilities; he assumes this amendment would include a new facility in the area. He also felt that the director of the Department of Corrections would probably want to respond to this issue. The impacts are unclear right now. REP. VICK said that juvenile crime was increasing and these kids need to be housed somewhere. He sees nothing wrong with requesting the RFP to see what's out there that can be used. REP. KASTEN suggested that the Wilderness Program increase the number of beds; she felt that maybe that's what should be expanded, rather than build more buildings and keep up more sites. Let's give what's out there a chance to work.

Vote: Motion that HB 540 Molnar Amendment Do Pass failed 9 - 9 on a roll call vote, with REPS. GRADY, BARNHART, FISHER, JOHN JOHNSON, KADAS, KASTEN, MENAHAN, QUILICI and CHAIRMAN ZOOK voting no.

Motion/Vote: REP. COBB MOVED HB 540 DO PASS AS AMENDED. Motion carried 13 - 5 on a roll call vote, with REPS. BARNHART, JOHN JOHNSON, KADAS, MENAHAN and QUILICI voting no.

HOUSE OF REPRESENTATIVES

Appropriations

ROLL CALL

DATE 3-21-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Tom Zook, Chairman	✓		
Rep. Ed Grady, Vice Chairman, Majority	✓		
Rep. Joe Quilici, Vice Chairman, Minority	✓		
Rep. Beverly Barnhart	✓		
Rep. Ernest Bergsagel	✓		
Rep. John Cobb	✓		
Rep. Roger DeBruycker	✓		
Rep. Gary Feland	✓		
Rep. Marj Fisher	✓		
Rep. Don Holland	✓		
Rep. John Johnson	✓		
Rep. Royal Johnson	✓		
Rep. Mike Kadas	✓		
Rep. Betty Lou Kasten	✓		
Rep. Matt McCann	✓		
Rep. Red Menahan	✓		
Rep. Steve Vick	✓		
Rep. Bill Wiseman	✓		



HOUSE STANDING COMMITTEE REPORT

March 22, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Appropriations report that House Bill 540 (first reading copy -- white) do pass as amended.

Signed:

Tom Zook
Tom Zook, Chair

And, that such amendments read:

1. Title, line 5.
Following: line 4
Insert: "AND"
Strike: "7-32-2244,"
Following: "~~39-71-774,~~"
Strike: remainder of line 5 in its entirety
2. Title, line 6.
Strike: "41-5-103," through "41-5-301,"
3. Title, line 7.
Strike: "41-3-305,"
Strike: "41-5-307, 41-5-313, 41-5-401,"
Strike: "41-5-521,"
Strike: "41-5-523,"
4. Title, line 8.
Strike: "41-5-526," through "41-5-601,"
Strike: "41-5-703,"
Strike: "41-5-810,"
Insert: "AND"
5. Title, lines 9 and 10
Strike: line 9 through "41-5-809," on line 10
6. Page 1, lines 14 through 16.

Committee Vote:

661159SC.Hbk

Strike: section 1 in its entirety

Renumber: subsequent sections

7. Page 6, line 1 through page 10, line 13.

Strike: sections 2 through 4 in their entirety

Renumber: subsequent sections

8. Page 10, line 20.

Strike: "or force the child to take prescribed"

Following: "medicine"

Insert: "prescribed for the child"

9. Page 11, lines 15 through 17.

Following: "include" on line 15

Strike: remainder of line 15 through "as" on line 16

Following: the first "defense"

Strike: "or"

Insert: ", "

Following: "others,"

Insert: "or"

Following: "harm" on line 16

Strike: remainder of line 16 through "actions" on line 17

Insert: "that does not constitute harm to a child's health or welfare"

10. Page 12, line 2.

Following: "~~shelter,~~"

Insert: "shelter,"

11. Page 14, line 6 through page 23, line 3.

Strike: sections 8 through 13 in their entirety

Renumber: subsequent sections

12. Page 23, line 19 through page 24, line 14.

Strike: section 15 in its entirety

Renumber: subsequent sections

13. Page 24, line 21.

Following: "~~or~~"

Insert: "or"

14. Page 24, lines 23 and 24.

Strike: "; OR" through "FACILITY" on line 24

15. Page 24, line 26.

Strike: ", must be segregated from juvenile offenders,"

16. Page 25, line 6 through page 27, line 4.

Strike: sections 17 through 19 in their entirety
Renumber: subsequent sections

17. Page 27, line 20.

Following: "~~guardian~~"

Insert: "the parents, legal guardian, or"

18. Page 29, line 15.

Following: "(4)"

Insert: "upon a finding of an offense related to use of alcohol
or illegal drugs,"

19. Page 29, line 18 through page 30, line 15.

Strike: section 22 in its entirety

Renumber: subsequent sections

20. Page 31, line 15.

Following: "~~guardian~~"

Insert: "the parents, legal guardian, or"

21. Page 31, line 21 through page 39, line 28.

Strike: sections 24 through 29 in their entirety

Renumber: subsequent sections

22. Page 40, line 4.

Strike: "must"

Insert: "may"

23. Page 40, lines 17 through 28.

Strike: section 31 in its entirety

Renumber: subsequent sections

24. Page 41, line 3.

Following: "provide"

Strike: "shelter care"

Insert: "an appropriately physically restricting setting"

25. Page 41, line 13 through page 42, line 1.

Strike: section 33 in its entirety

Renumber: subsequent sections

26. Page 42, line 27 through page 47, line 23.

Strike: sections 35 through 41 in their entirety

-END-

**HOUSE OF REPRESENTATIVES
54TH LEGISLATIVE SESSION - 1995**

ROLL CALL VOTE

APPROPRIATIONS COMMITTEE

DATE 3-21-95 BILL NO. HB 540
MOTION Rep. Vick moved HB 540 Amendment
(HB054001.A6P) Do Pass failed 9-9.

NAME	AYE	NO
Rep. Ed Grady, VICE CHAIRMAN, MAJORITY		✓
Rep. Beverly Barnhart		✓
Rep. Ernest Bergsagel	✓	
Rep. John Cobb	✓	
Rep. Roger DeBruycker	✓	
Rep. Gary Feland	✓	
Rep. Marjorie Fisher		✓
Rep. Don Holland	✓	
Rep. John Johnson		✓
Rep. Royal Johnson	✓	
Rep. Mike Kadas		✓
Rep. Betty Lou Kasten		✓
Rep. Matt McCann	✓	
Rep. Red Menahan		✓
Rep. Joe Quilici, VICE CHAIRMAN, MINORITY		✓
Rep. Steve Vick	✓	
Rep. Bill Wiseman	✓	
Rep. Tom Zook, CHAIRMAN		✓

**HOUSE OF REPRESENTATIVES
54TH LEGISLATIVE SESSION - 1995**

ROLL CALL VOTE

APPROPRIATIONS COMMITTEE

DATE 3-21-95 BILL NO. NB 540

MOTION Rep. Cobb moved NB 540 Do Pass As
Amended carried 13-5.

NAME	AYE	NO
Rep. Ed Grady, VICE CHAIRMAN, MAJORITY	✓	
Rep. Beverly Barnhart		✓
Rep. Ernest Bergsagel	✓	
Rep. John Cobb	✓	
Rep. Roger DeBruycker	✓	
Rep. Gary Feland	✓	
Rep. Marjorie Fisher	✓	
Rep. Don Holland	✓	
Rep. John Johnson		✓
Rep. Royal Johnson	✓	
Rep. Mike Kadas		✓
Rep. Betty Lou Kasten	✓	
Rep. Matt McCann	✓	
Rep. Red Menahan		✓
Rep. Joe Quilici, VICE CHAIRMAN, MINORITY		✓
Rep. Steve Vick	✓	
Rep. Bill Wiseman	✓	
Rep. Tom Zook, CHAIRMAN	✓	

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 27, 1995,
at 3 P.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Steve Doherty
Sen. Sharon Estrada
Sen. Reiny Jabs

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 540
Executive Action: None.

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 540

Opening Statement by Sponsor:

REPRESENTATIVE BRAD MOLNAR, House District 22, Laurel, presented HB 540, a general revision of the Youth Court Act. There were about 30 points of agreement when the bill was amended in the House Appropriations Committee, he said, between himself and others with concerns, that never did make it into the bill. However, he handed out a sheet of amendments (EXHIBIT 1). He

said the tone of the bill was greatly softened. During the past three weeks, he told the committee, every daily paper in the state had headlines and editorials stating that the juvenile justice system needed massive overhauls. They wanted action now as well as on-going studies in the future. HB 540 is an attempt to do what is easy to do now, he assured them.

Proponents' Testimony:

REPRESENTATIVE ELLEN BERGMAN, House District 4, Miles City, spoke as a proponent for the bill. She was also speaking for others in Miles City. Fred Anderson, principal, Custer County District High School, sent a fax which she presented. (EXHIBIT 2). She produced copies of a letter from Grover Briggs, Pastor, Miles City (EXHIBIT 3). She said he was also Chairman of a Parents' Advocacy group. He was very concerned and very supportive of the bill. She also presented letters of support from Jack T. Regan, Assistant Principal, Custer County District High School, (EXHIBIT 4), and Ted Schreiber, Activities Director, Custer County District High School (EXHIBIT 5). She concurred with HB 540 and stated that the general public is getting tired of crime. They were becoming more affected by it day after day and could not understand why it could not be stopped. Most people believed that the law would apply to everybody the same, and were finding out it wasn't. She felt it was a vital necessity to change the youth court. She also presented a letter from Robert Richards, Superintendent, Miles City Unified School District (EXHIBIT 6).

Bruce Nachtsheim, Assistant Principal, Helena High School, represented himself. He told the committee that he had been in education for 25 years, had previously been in the service of the FBI, and currently served on the Police Commission in Helena. He supported HB 540 because he had a grave concern for the youth of the community, and for the lack of direction that he perceived among them. As a disciplinarian at the high school, he daily dealt with problem youth who had no structured environment in which to function. There are youth coming to the school who don't belong in their school - they don't belong anywhere. They were not enrolled students, yet they were there to cause problems. There were also students ordered into the school by the court who were not interested in being there for the purpose of education. He said he could easily see 150 kids a day who are creating problems in the Helena High School alone, a school whose population numbered 1,600. Those students choose to be disruptive, insubordinate and unaccountable for their actions. But because of the lack of support in the law, there is not much that can happen to them. He said it was a negative influence in the system. He supported HB 540 and thanked the sponsor. He urged a drastic change in the youth corrections system.

Dr. Mark Mozer, Clinical Psychologist, in private practice in Helena, represented himself. He wished to convey support for HB 540, he said, which sought to modify the juvenile probation system by invoking meaningful consequences upon juveniles who

break the law. He had been a consultant at the Montana State Prison for 17 years and had evaluated thousands of inmates. He had seen innumerable youthful offenders, products of a system that has failed in many respects, notably by a pattern of providing too little consequence, too late. From his observation, he thought the system characteristically slapped the juvenile offenders' hands repeatedly but the apparent effect was simply the desensitization of the offender to the system, so he had no fear of the law, believing that he could, quite literally, in some cases, get away with murder. It is no wonder that the state prison's youthful offenders are becoming more numerous and more vicious. To look at it in another way, he said that kids who get in trouble characteristically think that they are O.K., and the rest of the world is out of step with them. To not provide meaningful consequences is to reinforce the attitude that nothing is really wrong or needs to change with the offender. Providing early meaningful consequences should hasten the day when kids take a hard look at themselves. It was his opinion that if the juvenile justice system would acquire some teeth, in the form of significant, enforceable consequences, some of the kids who otherwise seemed destined for prison might be deterred from a life of crime. He realized it would create more work and add an expense, but if the efforts would prevent further trouble down the line, they would have been worth it, both for the sake of the kids involved and in terms of cost to the correctional system. He urged a Do Pass on HB 540.

Neal Christensen, Youth Helena High, spoke in support of HB 540. He said he had 38 years' experience in education. For 13 years he worked at Mountain View School, six years as a counselor, and six years as principal per se. Over the years one thing had become abundantly clear to him: they were going in the wrong direction in the juvenile justice system. They had systematically removed boundaries from errant youth under parental authority and have for reasons that escaped him, determined it was best for a youth to have zero consequences for their actions until they became totally incorrigible. The rate of growth of juvenile crime and the \$72,000 allocated for new placements into the adult corrections system (youth who have come of age since the last session) is proof positive that the status quo has failed. Status quo is that a youth going into the system normally comes out worse than they went in. The story of a youth with a shotgun always came to his mind. A young man had been sentenced to 90 days at Mountain View School. The professionals basically said, "this individual should be here for years." Nobody wanted to listen, he was let out, and in a matter of days was down at the local park with a shotgun pointed at little kids' heads gathering money for drugs. He then escaped the system and spent months being caught. He should not have been out in 90 days. In another story, he recommended a female youth be held for a longer period of time. She went into the Managed Resources Montana system, and within a week she was on a three-state crime spree, which included burglary, dope, drugs and armed robbery.

This girl never did really believe that anything would be done to her. He stated they were just two stories of many. Many of the obvious changes required to have a functional program were included in HB 540. He said he had watched throughout his entire adult life in dismay as they traded philosophy for results, results that could have saved the kids from being an adult offender and save the victims much pain. He never thought he'd ever see the fight begin to retake our streets and their kids. He thanked the sponsor. He was proud to be a part of the fight, he said, and urged a Do Pass resolution.

Connie Boyer, Helena, parent of six, represented herself. She stated she had been working with the local juvenile system since October of 1993. During that time, she had heard her child being threatened repeatedly, but nothing happened. It was like a little child touching a TV knob and the parent screamed and yelled, "don't do that again, or I'll spank you." Nothing happened. But then one day, when the child repeated the same act over and over, the system came up and hit them up alongside the head and said, "I told you I was going to do something." The system now gives empty, idle threats. The kids are running loose, listening to each other on the street, and they have no consequences until it is too late. She said they needed change. They needed parents to be responsible for their children. These kids were tomorrow's future, she said.

Gordon Smith, Gallatin County Justice of the Peace, also served as City Judge in Belgrade and Manhattan, represented himself. He told the committee he had been a judge for over eight years and had watched juveniles come into the court system and into the juvenile probation system as well. He had had many conversations with parents who were concerned about the system, in many cases requesting that their children not be transferred to juvenile probation, but remaining in the court system because they felt there was more that could be done. However, he said, there really wasn't. He had seen a big change in children in the eight years he sat on the bench. These youth know and understand the system. They also knew the system could not do anything to them. As an example, he told of a young man in Gallatin County that had appeared in justice court at least 15 times. He was a terror in his neighborhood. The people were afraid of him. If they reported him to the police for violations, they could be assured that within the next few weeks, they would have some damage to property, such as sugar in the gas tanks, cars keyed, etc. The youth was 14-years old, knew and understood the system, knowing that nothing could be done to him. To date, nothing HAD been done to him, he said. Another young man was always involved in the court, made it a practice to use the school as a forum to tell the other kids how to violate the law, do whatever they wanted, and not be held accountable in any way, creating problems for the school officials. That young man became 18 years old, and because he continued in the ways of his youth, landed in the federal penitentiary and will be there approximately 15 years. Mr. Smith maintained a loss of control over youth. Something

must be done, he said. The situation was becoming more severe each year to him, as he sat on the bench. As a result, he wanted to appear as a proponent to HB 540.

Mary Ellerd, Executive Secretary of the Montana Juvenile Probation Officers' Association, said her organization supported HB 540 without the amendments, as it came out of the House. Both the House Judiciary and House Appropriations urged the interested parties (the Juvenile Officers' Probations Association, DFS, Board of Crime Control, church groups, Mental Health, and more), to work with the sponsor to agree on a bill they could all support. The bill, without the amendments, was the product of that work. They had had hours of meetings and were just now shown the amendments, she said. She thought the amendments took the bill back to its original form.

Mary Alice Cook, representing the Advocates for Montana's Children, spoke in favor of HB 540, saying that the youth court system needed to be improved so that the youth can accept responsibility for their actions. They were involved with the intense efforts that went on during the House hearing on the bill. They worked hard to develop amendments that were acceptable for those involved. Their organization supported HB 540 as it was amended in the House.

Janie Petaja, represented herself. As the mother of a 16-year-old, she found herself in the middle of the juvenile probation system working with the Helena Probation Department to try to do something about her child, who was out of control. She commented on her observations of the system. The parents, police, probation people and the mental health people are all absolutely powerless. The child has all the power. They can say, "no," to anything and no one can make them do it. They can say, "I will," and no one can stop them. She was told on many occasions that there was nothing they could do. If the child had committed a felony, they could maybe do something. They could not even pick up the girl without a warrant when she was a runaway. And if they did find her, they could not hold her until the parent came to pick her up. They could not violate the child's rights by asking her questions. **Ms. Petaja** said there are no consequences. The system is built in to prevent any consequences to kids' behavior. When children are little, parents stop destructive behavior right away. They would not let them play with an electrical plug. But when the child is older and doing things that are dangerous, or life-threatening or bad or could hurt someone else, they get put into a "holding pattern," and nothing happens. Nobody can help them; they get only promises and threats. She said her daughter dropped out of school, tried suicide repeatedly, used drugs, hung with other people on probation and ran away on freight trains. Each time the parents would call the probation authorities, but they could not help. They tried to get the child into Shodair Hospital as an emergency. It seemed to her that they were waiting for the youth to turn 17, so then they can look at putting them in as adult

offenders. The parents that are trying to use the system to help are hitting a brick wall, she said. Children need to learn their limits, need to know the consequences and need to be held accountable. They need it to happen right away, not months later. She urged approval of the measure.

Hank Hudson, Director, Department of Family Services, appeared as a proponent for the bill in its current form. He had not seen the amendments presented. When they first worked on the bill, they had some initial concerns before they could support it. They could not agree to anything that would pass on unfunded costs to local governments. They could not agree to anything that was unfunded in their own budgets. They had some problems with language, such as forced medication and physical violence toward young people. The staff and department had dedicated a lot of hours to work on the compromise, the bill before them. One of the ideas amended out because of the cost, but that the Department felt had great merit was the idea of moving toward a system that provides immediate and predictable consequences for young people as they veer onto the track of delinquency or anti-social behavior. Their system now allowed young people to escalate their illegal behavior without consequences until they reach a point where they break the threshold of tolerance. But by that time, they had already missed the best opportunity to redirect them. Some of the things they opposed in the bill were resisted because of the checkbook, he said. There would have been a system of immediate, graduated consequences that address young people's behavior when they first start not coming home at night, or smoking cigarettes, or entry-level delinquent behaviors. The second problem was that the focus of the early intervention seemed to be incarceration, which had not been proven to be the most effective deterrent, although it may provide public safety. In the hearing, probation officers from around the state spoke as opponents for the bill. Those people are one of the biggest critics of the department, he said, because they wish kids stayed in Pine Hill longer and wished the department would deal more severely with them. They were also concerned about who would pay. County commissioners and MACo were also there to address the money issue. He said all the things summarized why they were not completely comfortable with the bill. The department would support the idea of allowing for concurrent sentencing for the most severe offenders who pose a threat to others, so they can be given an adult sentence. They also supported the bill to eliminate the secrecy and confidentiality surrounding youth court proceedings. He said they had funded seven programs to provide for tracking, restitution and treatment programs for youth to keep them out of the system, which had been successful in their communities. He told the committee that there was not necessarily more youth in trouble, the numbers were not exploding, but they were seeing more kids breaking the law who seem to be suffering from very serious emotionally and mental disorders. For that reason, he said, the Governor had encouraged an increase in the funding for Youth and Mental Health Services. Mr. Hudson said they needed to change

their youth court system, but they were struggling with a balanced approach, and how to balance the three major purposes of the Youth Correction System. The first purpose would be public safety. The second purpose would be allowing competency and ability so they would not be lifetime members of the correctional system. The final purpose would be to hold people who break the law and/or injure citizens to be accountable to that community. He expressed his support of HB 540 as amended.

Gordon Morris, Montana Association of Counties, (MACo), spoke in favor of the introduced version of HB 540. They asked to reserve comment on the proposed amendments.

Bob Torres, representing the Montana Chapter of the National Association of Social Workers, said his organization was interested in any bills concerning: 1) children, 2) child-protective services and how children are protected under that system, and 3) a general interest in the treatment of youth especially in prevention and intervention programs. When HB 540 was originally introduced, it dealt with those areas in a very sweeping and broad way. He thanked the sponsor for his willingness to work with them. He said there would need to be a level of community responsibility for children which would emphasize parental responsibilities as well. The sponsor had agreed with their concern about not expanding the authority to abuse children. The majority of parents are well-meaning and committed to caring for their children, but some are ill or incompetent and cannot draw the line between discipline and abuse. They were also interested in the treatment provision in the bill for the youth court system. However, the provision for treatment mandated in unavoidable circumstances was a concern to his organization because they were opposed to the incarceration or detention of anyone who is mentally ill. He said they promoted the idea of "tough love," a program that teaches consequences and discipline, but not punishment. He said the most disturbing portion of the bill to his organization was Page 13, Section 41-5-102, in the declaration of purpose where the Youth Court Act would remove from youth committing violations the element of retribution. He said they had tried for the substitution of "rehabilitation," with the acknowledgement that youth are not fully formed and are immature. The bill would remove that section of the law, which to him is a profound change in the direction of the act. He would have preferred to leave in the acknowledgement that youth was not fully formed, immature, and they did have problems that could be treated successfully. He supported HB 540 as amended by the House.

David Hemion, representing the Montana Mental Health Association, spoke in support of HB 540 as passed by the House. The concerns they had during the discussions had been addressed by the amendments that were made in the House. Some of those same concerns were again addressed in the sponsor's amendments, he said. Their main concern is any section that would criminalize children with mental illnesses whose illness creates behavior

that is in violation of the law. They were opposed to having those people go into the criminal system rather than being treated as mentally ill.

Gloria Hermanson, represented the Montana Psychological Association. They also preferred the version of HB 540 that came from the House.. They were opposed to many things in the bill prior to the amendments made in the House. She recommended a Do Pass in its current form. She had not had a chance to review the amendments in detail.

Sharon Hoff, representing the Montana Catholic Conference, stated that her organization supported the bill in its current form as it came from the House.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked the sponsor about his statement concerning 22 amendments that did not get onto the bill in House Appropriations that were supposedly agreed to by the parties. REPRESENTATIVE MOLNAR replied that there were 23 areas of agreement, some of which were in the same section. For instance, four out of five may agree on one thing, then in a different meeting, other people might have shown up, and four more out of those five might agree on the next line. He estimated agreement of most of the proposed amendments at 75 per cent of the participants. SENATOR HALLIGAN asked about the "sight and sound" separation which language he was separating in his amendment, despite the fact that federal law requires it. REPRESENTATIVE MOLNAR stated that the amendment would strike it, that it no longer appeared in the bill, nor in the amendments. If it would appear in the amendments, it would be an oversight. SENATOR HALLIGAN asked Mr. Hemion about the effect of the amendments on Page 9 in terms of changing the mentally ill language to have a mental disease or defect language. He asked if there was agreement with that section with the sponsor. Mr. Hemion said he did not know anyone except REPRESENTATIVE MOLNAR who was comfortable with that. Everyone else supported the existing law, which says if children have mental illnesses, they are treated and not put into correctional facilities. SENATOR HALLIGAN asked for his opinion on the amendments by the sponsor. Mr. Hemion said he had seen them only briefly and requested time to study them before he made a response. He said they had concerns regarding Page 1 and Page 9 in reference to children with mental illnesses. On Page 12 of the amendments, Section 16, as they understood it, if a child was in a correctional facility with a behavioral illness that required treatment, it would not take place in a residential center. The patient would not be transferred out until they had served half of their detention time. He did not even think they did that to adults in this

state. They felt it was a somewhat arbitrary line and the issue of treating the illness was the paramount one to them. SENATOR HALLIGAN asked about the fiscal note. With the amendments, he asked where the fiscal note would end up? REPRESENTATIVE MOLNAR said if all the amendments went on, the fiscal note would end up in a positive cash flow of \$7.1 million. He stated they would cut the in-patient treatment in half for behavioral problems, temper and substance abuse. The patients are Medicaid-qualified when they go in because they were a ward of the state. However, as long as they are in there, the state could not collect Medicaid. If they were in a place like the Yellowstone Treatment Center, it would mean \$4.1 million they would get back in Medicaid. He also said it would keep the money with the kid. For instance, a kid in Missoula going to Hellgate High School would be eligible to receive A and B money and special ed money at Pine Hills. The amount would be \$25.50 per day. He said they were looking at 210 kids per year between alternatives programs and Pine Hills program. Also, ten per cent of the current population there receives Social Security because they have only one parent. It would be upwards of \$550.00 per month per youth that is not being recaptured at this time. Parental contributions only happen if and when the court orders it. He told the committee that SRS did not go after the parental contribution for three months, but most kids were only there for three months. HB 540 would mandate that they would not wait for the court order, but go and pick the money up. All these things added together meant \$7.1 million, plus it would free up about half of the beds. A judge could directly sentence a kid in, but it would be at county expense because it would cap at 110 per year they were currently budgeted for, he explained. SENATOR HALLIGAN asked if there was a fiscal note to reflect the \$7.1 million. REPRESENTATIVE MOLNAR said because the amendments were just done prior to the meeting, there was no time for a fiscal note, but he would try to get one done for the next day. He had letters from DFS, he said, that explain the Medicaid part of it and that he was correct. The balance of it was basically common sense. He would take the amount of A and B per kid, multiply it times the kid, times the number of days, which is 180, and that was it, he said. He submitted a document which showed the figures. (EXHIBIT 7). SENATOR HALLIGAN asked if the sponsor had an agreement with the people in the House, why there were changing the rules now? REPRESENTATIVE MOLNAR said it was because they had four pages of amendments and only 20 minutes to do them. He said DFS was there for part of the negotiations, Mr. Torres was there for all of them, and some of the other people were never there. For instance, the bill as amended, says that if a kid is busted for dealing drugs in Laurel, and the parents are really angry at him, it makes him a, "youth in need of care." So the kid is placed in foster care in Billings, but the kid is still a drug dealer. The school there would have a right to refuse to admit that kid. He said at an increase of 25 per cent a year in drugs, it was no wonder if using state dollars, they would take drug dealers and move them around. The bill would allow the school to know what is happening. He said that provision was agreed upon by most

everyone. Currently, if a kid is picked up for having a case of beer in the back of the car, as well as drug paraphernalia, the violation of the beer could go to the city court judge, but the drug paraphernalia cannot. The only four violations that can go there are: alcohol, gambling, fish and game and traffic. The bill would open the court to all misdemeanors. This was agreed to by everyone, he said, including the psychologist, **Dr. Mozer** and **REPRESENTATIVE ROYAL JOHNSON**. They had all agreed that these things were common sense and could be done. However, he said, by the time the amendments were typed up, the committee had already decided to accept the others for the purpose, not of saying, "this is what we had decided because it was right and proper," but rather they felt they had to get it to the floor because of a deadline. To try to pull the four pages of amendments together at that time was a Herculean task. He referred to the list of amendments in **(EXHIBIT 1)** and told the committee he would have it retyped and put an asterisk on those which were primarily agreed upon by virtually everyone, underlining virtually, he said, because not everyone was at every meeting. He said that every point of view was represented at every meeting. **CHAIRMAN BRUCE CRIPPEN** clarified the transmittal issue. He stated that **HB 540** was a general bill, but for some reason was exempted from the transmittal deadline, perhaps because of a large fiscal note. It went to House Appropriations because **SENATOR HARP** was concerned that it might be considered a general bill. If amended in the committee, it would have to be returned to the House, he explained, but if no amendments were made, it would have no deadline. **REPRESENTATIVE MOLNAR** argued that if the amendments were put on, there would be \$7.1 million to help defray costs to the counties. He said it would go to Conference Committee and Free-standing Conference Committee anyway. All the players would still be invited in to work on it at that time. It was agreed to hold the Executive Session for the bill the following day.

Discussion: **REPRESENTATIVE MOLNAR** passed out a handout called the, "predatory youth program," which is what they did in California, called **SHOCAP**, or Serious Habitual Offender Comprehensive Action Program. **(EXHIBIT 8)** He said the program reduced juvenile crime there 70 per cent. Obviously, they would want that amendment in, he said. They had no problem with anyone on that. He promised a dissertation with the amendments.

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Closing by Sponsor: **REPRESENTATIVE MOLNAR** said there was a considerable difference in the past two weeks. When the bill was first heard the opponents were lined up to yell and scream. The second time they came by the busloads to yell and scream. This time, however, was a love-in. What the bill would do without the amendments is allow the parent to give medication under a treatment program to a child. It would also allow a parent to defend themselves and others, and to keep a kid from harming themselves. He said it would have been inconceivable if someone had told the committee 20 years ago that they would have to have

legislation to allow a parent to give their children prescribed medicine or to be allowed to defend themselves against a kid that was drunk or on drugs without facing actions by the state. HB 540 would allow that shelter care would be appropriately physically restricting. He said for example at the Youth Service Center in Billings, youth could be held overnight only for a suicide watch. When they are no longer a hazard to themselves or others, they could be transferred over to the shelter care side. Under current law, shelter care may not have a locked door or window. It may not have a fence. These kids get up and walk away, he maintained, and they may be awaiting a trial on serious charges. It would also say a judge could ask for a urinalysis to substantiate a confession. Some things were said in the hearing that were not true, he said. One was that he was relying primarily on incarceration. He said in the bill that all counties must have a community service program. Currently only 50 per cent of the JPO's (juvenile probation officers) even have that service. **REPRESENTATIVE MOLNAR** stated that there was nothing between any crime and Pine Hills. That's the problem. On the concurrent sentencing suggested, he said, "big deal." by the time concurrent sentencing occurs, the kid is totally incorrigible, he's looking at Deer Lodge, his list of victims is long, you've lost the kid and every kid that has come into contact with him. As the psychologist pointed out, it has got to be up-front. It has to be the first one or two status offenses to establish a boundary. After that, the metamorphosis from corrigible from incorrigible becomes absolutely guaranteed. He agreed with **Mary Ellerd** that the point system did not make it, but on thinking about it: this is onerous to tell a kid they have one point for a misdemeanor, and at six points, which is two felonies, they get five days? If five days' incarceration for two felonies is onerous, then what are the counties doing that they can't afford it? The answer from a stack of letters from the counties was: "they are doing nothing for two felonies." That's the problem, he said. That's why they were \$72 million down the toilet to handle new offenders. When **Mr. Hudson** talked about the oppositional defiance behavior and \$8 million, he said he agreed, but the behavior is the first sign that the kid is on drugs and that is why they had a 25 per cent increase in drug crime and a 25 per cent increase in oppositional defiance behavior. The \$8 million could easily go toward drug interdiction and they could get a far better result than trying to pull a kid back out, once in. His bill would say that no child is detained if he is mentally ill, he professed. It would say that if the kid does not understand the consequences of his actions, and the criminality of his act, he shall not be allowed in. That would tighten the law, not loosen it, he attested. **Mr. Torres** had been concerned about rehabilitation, he said. But the sponsor maintained that it did not happen on the street or at the school, if at all. They must be away from the other kids so that they did not enlarge the circle of kids to be dealt with. They should demonstrate to the other kids that they were right NOT to get involved with the offender or the offense. Kids now could see a violator getting picked up by the police on Saturday and

see the kid back at his desk on Monday. Every kid who witnessed that would have lost, he said. They were putting out the wrong message. They are not major consequences to tell the school that the kid was picked up for drugs and now he would be kicked off the basketball team, or would be held out of school until he could pee in a bottle and doesn't glow at night. He said there was nothing in the bill that should not have been a part of their program for a long time. He recited crime rates for the various counties of the committee members and the corresponding placements. If the crime rates go up and the placements do not, the streets are the holding tanks for these juvenile offenders, he said.

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

DATE _____

3-27-95

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- 5) Allows parent to follow prescribed treatment plan. Page 1
- 6) Opens city and justice courts to minor youth crime. Page 1
- 6B Returned original language of age limitations and limits non-court consequences. Page 3
- 7) Juvenile Probation Officer may not cause placement or treatment. Must go through placement committee. Page 4
- 7B Allows for escape from shelter care to allow placement in secure detention. Page 5
- 8) Allows youth to be held in secure setting in police station. Page 6
- 10A) Petitions and affidavits must focus on allegations against offender and proven facts. Page 8
- 11 ~~A~~ Youth must be able to appreciate the criminality of his act to be placed in youth correctional facility. 2) Youth in need of supervision may be placed in youth correctional facility. Page 9
- 11B Point system - transfer of existing funding. Guaranteed treatment. P.12
- 11C Allows school to reject state placement of youth with active chemical or criminal issues. P.13
- 12) Juvenile Probation Officer to enforce orders of the court. Page 14

9-) allows N.A. a verify confession P.17

13) arresting officer may place youth in detention-center P.14

March 27, 1995

SENATE JUDICIARY COMMITTEE

COMMITTEE NO. 2

DATE 3-27-95

FILE NO. HB 540

TO: Members of the Senate Judiciary Committee
Montana State Senate

FROM: Fred Anderson
Fred Anderson, PhD, Principal

RE: House Bill 540

I apologize for not being here to present this testimony in person; however, the storm that arrived in Helena on Friday and Saturday has moved eastward to Miles City causing very hazardous roads and travel conditions. Combined with this, I have some very pressing obligations at the school. Please accept my comments as an indication of my support for House Bill No. 540.

Schools are charged with the responsibility of having a drug free, safe learning environment for students. This has been part of the federal agenda for the past several years and I am certain is a key priority for every parent as well as every educator. If we are to accomplish this goal, it will require cooperation between schools, the judicial system and families.

Unfortunately, the communication and cooperation schools receive from the judicial system is woefully inadequate in most cases. Schools are not notified when their students have been involved in serious violations of the law. It is not unusual to have the court/family services move students from one judicial jurisdiction to another and place them in foster care. They are enrolled in school in the new judicial district with little, if any, background information relating to past violations of the law and/or substance abuse problems. A student could have a history of

drug transactions, violent behavior or other felony offenses and the receiving school would typically not be informed about the background problems.

A specific example of the communications problems and lack of cooperation that our school experienced involved a young man who transferred here as a sophomore. We were told nothing of the student's background. He was very disruptive from day one, was involved in multiple fights, suspected drug sales, and in general distracted significantly from the educational atmosphere of our school. Adding to this, he gathered a group of students who were marginal in behavior around him as a support system. Numerous inquiries to juvenile probation officers revealed no information on the student. We were repeatedly told that any past transgressions were a matter of confidentiality. It was not until the student assaulted another young man with a baseball bat over a drug transaction that we learned that he had a history of assault and drug abuse. Is it fair to the students who attend school expecting to learn in a safe environment to be subjected to multiple offenders who are moved from school district to school district by the judicial court system?

Earlier this year, four of our students were arrested for felony breaking and entering. We did not receive any notification from the juvenile probation officers. Our information came from parents of the students who came to the school and asked if the school could do anything to help their sons realize the severity of what they had done. The parents felt that the juvenile probation officer had been totally ineffective. Their interpretation was that the juvenile probation officer had not only minimized the incident, but had emphasized that if they kept their nose clean it would be "no big deal."

A recent survey by the students in attendance at the 1994 Montana State Student Council Convention reveals some interesting data. Fifty percent of the 500 students felt that violence was increasing in their schools. The students were specifically asked, "Do the Montana Youth Court Statutes (laws) provide an effective deterrent to control crime?" Fifty percent said no. A follow-up question asked, "Do you believe that youth (under 18 years of age) should be held responsible for crimes they commit? Ninety percent felt that they should. I believe this input from student leaders in our state shows that the students also realize that we need to revise our Youth Court statutes.

I, as a parent and school administrator, firmly believe that House Bill 540 provides a foundation for re-establishing a sense of consequence for wrongdoing by our youth. It also provides a basis for a partnership between schools and the judicial system which will help us achieve our goal of safe, drug free schools.

EXHIBIT 2
DATE 3-27-95
FILE HB 540

608 S Cottage Grove Avenue
Miles City, MT 59301
26 March 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 3-27-95

BILL NO. HB 540

Senate Judiciary Committee
Montana State Senate
Helena, MT

Dear Members of the Committee:

I appreciate the offer from Dr. Anderson to testify before your Committee on the benefits of House Bill #540 sponsored by Representative Brad Molnar. Although my professional schedule doesn't allow me to be present personally, please receive these comments as indication of my genuine concern for the issues that this bill addresses.

Over the past year and a half, a number of us who are parents have become increasingly concerned about the safety of our children and youth in the educational environment of public school systems. There is a growing incidence of chemical use and abuse, violence, and weapons (particularly firearms) within school buildings. As we've spoken with school officials, we have discovered that although there are school policies that govern these occurrences, there is no legal basis provided to educational systems by the State of Montana for supporting these policies. In addition some of the current laws regarding youth offenders in the educational system actually intensify the problem. As parents we are concerned specifically about the following issues:

1. The fact that there is no tracking of disturbed children and youth from one school system to another supports a dual injustice to these youth: a) the help that these young people need is not consistent nor continuous...they are not getting the help they deserve because there is no way to pass the appropriate information; b) in expressing their need, they become a disruptive influence to other students who depend upon an orderly learning environment for their education...they aren't able to learn because the time and attention of instructors are focussed on these few students.
2. School systems aren't equipped to address the special needs of students who are involved in instances of chemical abuse, violence, and weapons. Schools are designed to teach, not to modify critical behaviors. They have neither the trained staff nor the funds to respond. By legally forcing the schools to accept such students within their student bodies, a systemic injustice is

forced upon these students...their behavior problems continue to increase and the school educational environment continues to deteriorate.

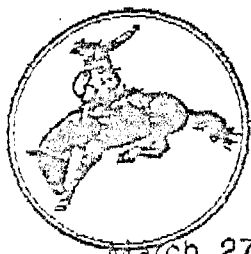
I believe that House Bill #340 begins to address these critical issues by defining in the Montana Youth Court Act the parameters within which school systems must respond to these special behavioral needs. Accountability for the student, his/her parents, the school system, and youth support agencies are more explicitly stated. As such it begins to make possible the fulfillment of the original intention of the educational system...to help children and youth learn. In effect this bill is a profound effort to salvage and restore the excellence of our system of public education. And it shifts the emphasis to providing the help that these special students require.

I encourage you to seriously consider the merits of this bill, and take a step toward preserving the integrity of our educational process.

Sincerely,

A handwritten signature in cursive script that reads "Grover T. Briggs". The signature is written in dark ink and is positioned above the printed name.

Grover T. Briggs



CUSTER COUNTY DISTRICT HIGH SCHOOL

20 South Center, Miles City, MT 59801
(406) 232-4920
Fax: (406) 232-4923

Fred Anderson, PhD, Principal
Jack Regan, Assistant Principal
Ted Schreiber, Activities Director

March 27, 1995

Post-It™ brand fax transmittal memo 7571		# of pages ▶
To <i>Mr. H. H. H. H.</i>	From <i>Jack Regan</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>1-900-825-1600</i>	Fax # <i>(406) 232-4923</i>	

Senate Judiciary Committee
Montana State Senate
Helena, MT

Dear Members of the Committee:

I am writing in support of Representative Molnar's HB 540. As assistant principal of Custer County District High School I have had direct experience with the failure of our present youth court system. Presently students under the age of 18 have no consequences for their actions and many times the problems are intensified because of the current laws.

The school is sometimes the last person to know when a disturbed youth is placed in our building. Many times the youth is ordered by the court to attend school and the administration is unaware until after the fact.

I don't believe schools are equipped to handle problems such as chemical abuse, sale of drugs, violence, and weapons. Most of the time this group of students greatly hinder the educational processes in our school. Isn't it time to give more of our attention to the students that want to learn and give the opportunity to the teachers to give them the time and energy they need. Students that spend their time continuously in the youth court system certainly have other things in mind other than education.

As a parent of two high school age kids, I certainly hope you consider giving your support to this bill and preserve the excellence of our public education system.

Thank you.

Jack T. Regan
Assistant Principal



CUSTER COUNTY DISTRICT HIGH SCHOOL

20 South Center, Miles City, MT 59301
(406) 232-4920
Fax: (406) 232-4923

Fred Anderson, PhD, Principal
Jack Regan, Assistant Principal
Ted Schreiber, Activities Director

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To <i>Rep Molnar</i>	From <i>T. Schreiber</i>	
Co. <i>House Rep.</i>	Co. <i>CCDHS</i>	
Dept.	Phone # <i>232-4920</i>	
Fax # <i>900-225-1600</i>	Fax # <i>232-4923</i>	

March 27, 1995

Rep. Brad Molnar
Montana State House of Representatives
Helena, Montana

Dear Rep. Molnar,

I am writing you concerning House Bill #540 and the benefits we as a school district would receive upon its becoming a law. As Activities Director of Miles City School District #1 and Custer County District High School, I am confident that your bill will greatly enhance the ability of our administration to deal with students in activities who are in violation of school district policy. Bill #540 will give us the legal backing to deal with habitual trouble makers. Students, school officials, law enforcement, and the legal system will all have a better handle on special situations; and we will again be in a position to help students learn that they are accountable for their actions.

In this day and age, we seem to be drifting further from the true intention of schools in educating students. Your bill will aid in getting schools back on the education track, leaving those with special needs in the hands of specialists. With the passage of your bill, education will again be the primary emphasis of our school systems; and a few will not hinder the majority seeking a good education.

Sincerely,

Ted Schreiber
Activities Director

TS/cr

Miles City Unified School District

*Junior District High School
School District No. 1*

ROBERT RICHARDS
SUPERINTENDENT

*Miles City Elementary Schools
School District No. 1*

March 27, 1995

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 3-27-95

FILE NO. HB 540

TO: Representative Molnar

FROM: Robert Richards, Superintendent *RR*

RE: HB 540 - Youth Court Act Revisions

I strongly support your efforts to revise the Youth Court Act. Presently the youth of Montana have no responsibility for their actions under Montana law. The system of rehabilitating youth for all crimes up to and including mitigated homicide is simply not working. Those youth who are committing the majority of offenses know that the system protects them from any meaningful penalty. By flaunting their rights to all authority, a serious negative effect is occurring with the majority of youth who are responsible and willing to obey the law.

The problem is becoming even more acute as the state abdicates their responsibility for treating emotionally disturbed youth by prescribing to the theory of "community-based services." Youth who are far more capable of posing a serious threat to our students and staff are now being placed in our regular educational program.

I applaud your efforts to change the current philosophy for dealing with youth offenders and sincerely hope that those efforts are successful.

RR/st

c: Representative Tom Zook
Representative Ellen Bergman
Senator Jerry Devlin

An Equal Opportunity Employer

1604 Main Street • Miles City, Montana 59301-3650 • 406/232-3840 • FAX 406/232-3147

TOTAL P.01

\$1.8 million from lottery per biennium

\$1.2 million OJJDP per biennium

110 youths per year x \$25.50 ANB per day x 180 days = \$504,900

\$1.1 million biennium plus special ed (Pine Hills)

\$1.1 million biennium Alternatives, Inc.

110 youth per year x 90 days in-patient treatment at \$185 per day being reimbursed at 66% from Medicaid equals biennium savings for 90 days.

\$2.5 million

\$7.7 million

.18 direct placements

Stalling repeat youth offenders

Program aids city agencies cooperate

By GARY ENOS
Staff Writer

Ask several agencies dealing with a city's troubled juveniles to identify their most violence-prone youths, and chances are the same names will appear on every list.

That's the basic but often-ignored theory Robert Heck of the U.S. Department of Justice used to create a program that has helped communities stem violence by targeting their worst juvenile offenders.

Created in 1982, the Serious Habitual Offender Comprehensive Action Program (SHOCAP) has served as a blueprint for cities dealing with youth crime. Federal funding to SHOCAP's model cities was eliminated in the last days of the Bush Administration, but the program lives on with local funding, both in the test cities and in scores of others that never received federal money.

Mr. Heck, SHOCAP's program manager, used a simple hypothesis in creating the program. He theorized that by persuading police, schools, the courts and social-service agencies to communicate, cities could identify the offenders responsible for most youth violence, build a better case against them and get them off the streets.

"I sincerely felt there were very few seriously involved juveniles who were responsible for a great deal of the juvenile crime that all youths were being smeared with," Mr. Heck said.

Mr. Heck sought five test sites for his theory. After overcoming skepticism from communities that had not been paying much attention to juvenile crime, he came up with his list: Colorado Springs, Colo.; Jacksonville, Fla.; Oxnard, Calif.; Portsmouth, Va.; and San Jose, Calif.

The five received federal money to hire a crime analyst, and were urged to share information about juveniles among the various agencies serving youths. In many of these places, such cooperation never had existed.

"Our assistant police chief at the time got us started," recalled David Keith, crime analysis manager in the Oxnard Police Department. "He used to say that before this happened, he didn't even know the name of the juvenile court judge in Ventura County."

Some cities' agencies were under the mistaken impression that federal statutes on the confidentiality of youth records barred departments from comparing notes. "The perception far outran the actual legal constraints," Mr. Heck said.

Mr. Heck's belief that an "elite" cadre of offenders accounted for most of a city's violent youth crime proved correct.

In most cities, about 25 youths per 100,000 overall population were found to be committing the majority of the violent offenses. Mr. Heck believes those numbers would be as true for large urban communities as they are for smaller cities like Oxnard and Portsmouth.

Once cities had a clearer picture of who their habitual offenders were, police agencies and prosecutors had

a better chance of winning harsher sanctions. In the past, police may have dealt with youths without knowing anything about their school offenses, or social-service agencies may have counseled families without realizing that one of the children was a habitual offender.

In Oxnard, Mr. Keith said, neighborhoods where four or five habitual offenders received jail time because of SHOCAP saw up to a 70% drop in youth crime.

Oxnard police were able to outline a profile of the serious habitual offender in their city of 142,000: a 16-year-old male with 16 arrests and a first contact with police at age 12. Often the Oxnard offender, who is likely to be Hispanic, comes from a broken family, uses drugs or alcohol and has been a victim of physical abuse, Mr. Keith said.

Conviction records in the model cities and in other communities receiving technical assistance from the Justice Department led critics to argue that SHOCAP was no more than a "lock-'em-up, throw-away-the-key" approach. Mr. Heck disagrees, saying the Justice Department never told cities what to do with their habitual

See Juveniles on Page 10

Juveniles

Continued from Page 9
offenders once they were identified.

"We were just saying it was important for people to have all the available information before them when dealing with these youths," Mr. Heck insisted. "Nothing in the program said you should lock up people for life or hang them by their thumbs."

The program's test cities heard the same arguments Mr. Heck did, so many reformed other elements of their juvenile-justice system.

In Colorado Springs, which has received a total of \$452,000 in SHOCAP money since 1983, offenders called for an end to housing violent youth offenders and runaways in the same facilities, said Emily Kline, crime analysis supervisor in the Colorado Springs Police Department.

In Oxnard, which received about the same amount of federal help, police created a comprehensive "aftercare" program of counseling and education for offenders who had served jail time.

Even though federal funding for the five model cities ended in January, most continue to pay for the program themselves. In Colorado Springs, a six-month funding request of \$30,000 for SHOCAP won out over plans to purchase a truck.

"In this line of work, it's a real compliment to be considered (more important) than equipment," Ms. Kline said. Also, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention has set aside some training money for communities interested in implementing SHOCAP, said Ron Laney, the office's law enforcement program manager.

Police in Oxnard and Colorado Springs have received dozens of calls from communities interested in SHOCAP. Ms. Kline, who said 19 cities in Colorado are creating similar programs, urges communities to centralize information in one agency.

And Mr. Keith of Oxnard says SHOCAP does not require a huge cash infusion. Instead, it is designed to make better use of the crime-fighting resources cities already have.

MEETING 2

DATE 3-27-95SENATE COMMITTEE ON JudiciaryBILLS BEING HEARD TODAY: EXEC. SESSION - HB 540

< ■ >

PLEASE PRINT

< ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Danie Petaja	Self	HB540	✓	
Donnie Boyer	Self	HB540	✓	
GORDON SMITH	GALLATIN CO. JP Self	HB540	✓	
Mark Mozer	Self	HB540	✓	
NEAL CHRISTENSEN	YOUTH HELENA HIDA	HB540	✓	
BRUCE NACHTSHEIM	SELF	HB540		
Bill Robbins	SELF	HB540	✓	
Gordon Morris	MACO	540		
David Lemmon	MT ASSOC. OF CHURCHES MENTAL HEALTH ISS	540		✓ Bennett
Ellen Bergman	Self & Schools	540	✓	
Bob Torres	MT. Cdp. NASW	540	✓	
Mary Eklund	MT JPOA	540	W/OUT	
She Kim	WBC@		✓	
James Logg	MT CATH COUN	540	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on March 28, 1995,
at 10:00 AM

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Council
Judy Keintz, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:
Executive Action: HB 540, SB 136

EXECUTIVE ACTION ON HB 540

Discussion: CHAIRMAN BRUCE CRIPPEN stated REPRESENTATIVE BRAD
MOLNAR had prepared a narrative on the amendments he proposed.

REPRESENTATIVE MOLNAR presented his proposed amendments, EXHIBIT
1, and a narrative EXHIBIT 2. The items on the narrative with
two asterisks had substantial agreement within the group, one
asterisk had general agreement, and no asterisk indicates a split
decision.

On page 1, amendment 5, they changed the language to read that a
parent may give a child medicine prescribed for him and to do so
is not an abuse of parental right. His amendments say "require"

but he then ties it back to §53-21-145 which is the right to be free from unnecessary and excessive medication. When a child is on an outpatient basis, under the conditions given by a doctor, and as part of the treatment program, a parent can tell the child he must take the medication. The parent cannot force the medicine but can require it.

On page 1, amendment 6 opens the city and justice courts to minor youth crime. Currently the only time they would go before a city or justice court is for a fish and game violation, traffic violation, alcohol violations, or gambling violations. This amendment would include drug paraphernalia, assault, and defacing property charges, etc. The lower courts would be opened for the lower crimes for these youth.

On page 3, amendment 9 returns to the original language of age limitations. It limits the non-court consequences. The juvenile probation officer can handle the first crime; however, after that he would go before the city court or justice court. The juvenile probation officer then is to handle what the court determines. This will give the youth offender a consequence without costing anything. It will take away the situation wherein a youth will interact with a juvenile probation officer 20 or 30 times with no consequences.

CHAIRMAN CRIPPEN asked **Ann Gilkey**, Department of Family Services, to respond to the amendments.

Ms. Gilkey stated she is familiar with the amendments from both sides. With regard to amendment 5, she stated this would allow the giving of medication. She stated that §43-21-145 does not involve a treatment plan. It talks about the treating physician overseeing and administering drugs. Since statute does not discuss treatment plans, this amendment would be very confusing. They agree that parents can give medications to children; however, they are concerned with parents crossing the line of forcing medications upon children. Doctors are in charge of administering prescribed drugs. With regard to amendments 6 and 9, she commented they had worked very hard with Judge Larson of Missoula on HB 380 on issues dealing with court jurisdictions and transfer to criminal court. HB 380 deals with transfer to adult court and jurisdictional issues. HB 240 and HB 380 are the two bills which they support now regarding transfer to adult court and jurisdiction. This bill may have some ideas which would be workable over time.

David Hemion, Mental Health Association of Montana, stated the bill amended in the House handled the issue of what degree of force would be used to give prescribed medication. The section referred to deals with patient's rights and being free from unnecessary or excessive medication. A patient is assumed to have some rights to say that they are not comfortable with that degree of medication.

SENATOR MIKE HALLIGAN asked why an existing treatment plan prescribed by a doctor could not also provide that the parents have the ability to require that the medication be taken? Why could that not be accomplished under existing law?

REPRESENTATIVE MOLNAR stated that the Mental Health Bill of Rights states that all people have a right to refuse their medication and their treatment plan. The state is trying to get around that provision in the state hospital. They would like a parent to be able to say that their child must take the medication while he or she is a patient at the hospital. If this is taken to a judge, the judge can provide that a child be forcibly medicated. The parent must show that the child is an immediate harm to himself or others. The statute he pointed out goes both to in patient and out patient. It states, except in the case of outpatient, all prescriptions shall be written with a termination date which shall not exceed 30 days. Medication shall not be used as a punishment.

SENATOR HALLIGAN stated city, municipal, and justice courts are not courts of record. If children are brought in front of them for other activities, they will want an attorney present which will increase costs to local governments because they are not set up to handle the juvenile system. He had a real problem with that section.

REPRESENTATIVE MOLNAR stated the House agreed with this section. They accepted all amendments from DFS and one or two of REPRESENTATIVE KASTEN's amendments. The Justice of the Peace who testified at the hearing agreed. He also has letters from judges who agree. Is it wrong to expect a city or a county to provide that if a youth is caught with a half ounce of marijuana that he would go before the same judge as he would go before on an alcohol charge? The sheriff in Gallatin County stated that 75% of the violent felony offenses in his county are by juveniles and there is not a judge to hear them.

Motion/Vote: SENATOR HOLDEN MOVED THE FIRST THREE AMENDMENTS ON HB 540. The motion FAILED on oral vote.

Discussion: REPRESENTATIVE MOLNAR explained item 4 on the narrative. This would state that a placement must go through a placement committee. Currently, when a youth gets into trouble, the juvenile probation officer, under his own volition, will place the youth in foster care. Placement is very limited and is almost all licensed foster care. This is an extremely wide range of care. This has created a \$3.5 million drain on the DFS budget. There is no attempt to place the youth with a grandparent, neighbor, etc. There are standing placement committees who should be able to okay placement of the youth. The next item on the narrative deals with shelter care. Currently shelter care may not have a locked window, door, gate or fence. If a youth wishes to walk away, by law they can do so. This would allow that if the youth escaped from shelter care,

they could go back to a detention center. Page 6 allows a youth to be held in a secure setting or be handcuffed in a police station. Federal regulations allow these youths to be held for six hours. They can be handcuffed and shackled in a squad car for transport to a police station. When they get to the police station, they cannot be handcuffed to a rail. They need to be in a room with an unlocked door and an officer watching them for the entire six hours. What is wrong with putting them in a room and locking the door or actually allowing them to be handcuffed? Some of these youths are 17 and 18 years old who can be twice the size of the police officer. A youth on angel dust can and will break handcuffs. They do not feel pain.

Ms. Gilkey responded on the 4th amendment on page 4 referring to placement committees. Probation officers are very opposed to having placement through placement committees. They need the authority to place children in foster care prior to the convening of a youth placement committee. The Department has asked for HB 150 which will have group placement committees meeting prior to adjudication and commitment to the Department. They are moving up the process. They do not want to move it up to the point where a probation officer could not act regarding placement of a youth prior to the convening of a youth placement committee. On page 5 the escape from shelter care to allow placement in secure detention would fly in the face of what a shelter care accomplishes. Shelter care is not detention. The page 6 amendment concerns the Board of Crime Control. If all the restrictions are not included, it could jeopardize their federal funding and grant money.

Gene Kiser, Board of Crime Control, stated there is six hour hold required which law enforcement has, but they still need to maintain the sight and sound separation of the secured lockup. The wording in the amendment is vague and may jeopardize their federal funding which goes to sight and sound separation of juveniles and adults in the same facility.

SENATOR HALLIGAN stated he has concern over that provision. A youth who has only been in trouble one or two times may only need a shelter care facility. With the changes in this bill, that person could be subject to the same kinds of potential lockup issues. The federal civil rights cases indicate the sight and sound issue is a major issue with the federal courts. When a shelter care facility would be made into lockup facility, there could be a problem with losing court cases as a result of that. This bill addresses substantial changes.

REPRESENTATIVE MOLNAR stated regarding the shelter care issue he is only being realistic. He visited the shelter care facility in Billings and asked how many of the youths were taken for drug treatment. He was told they all had drug problems. The youth is put in detention the first day he is there and then is placed on the shelter care side the next day. The youth who was arrested for a violent felony the night before is in shelter care the next

day and can walk away from the facility. The page 6 amendment does not affect the sight and sound requirement. This allows that a youth can be in handcuffs while he is being booked or before he is placed into a cell for purposes of controlling the youth. He was brought in in handcuffs and will be take out in handcuffs. Handcuffs should be left on during the booking process or while they are waiting for a car to warm up. The average police officer is a parent and would not handcuff a youth for six hours if there were no problems. Law enforcement officers are dealing with youths who are in a police station for a very good reason.

SENATOR HALLIGAN asked **Mr. Kiser** how often children walk away from shelter care facilities?

Dick Meeker, Juvenile Probation for First Judicial District, stated they do not have statistics on how many children walk away from shelter care. The ones who do leave the home are not the felony serious offenders. These are usually youths who are emotionally disturbed who have a very difficult time following rules. Most of the facilities around the state are not designed the same way as the Billings facility and could not become a semi-secure facility and protect the children and the staff at the same time with the economic conditions which we have.

Motion/Vote: **SENATOR HOLDEN** MOVED THE AMENDMENTS ON PAGES 4 AND 5 OF HB 540 DO NOT PASS. The motion CARRIED on oral vote.

Motion: **SENATOR HOLDEN** MOVED THE AMENDMENTS ON PAGE 6 OF HB 540.

Discussion: **SENATOR BARTLETT** stated the second part of this amendment, amendment no. 8 which deals with §41-5-401, goes back to an amendment which has already failed.

Valencia Lane clarified the committee would be voting on amendment no. 8 which begins on page 6 and ends on page 7. On page 7, (d) would be excluded which would mean there would be no amendment to § 41-5-401. Amendment no. 8 would read page 27, line 6, insert section 10. At the bottom of page 6, section 11 would be crossed out.

SENATOR DOHERTY asked if they were striking (a)(b)(c) and (d) and inserting the new language. That would be contrary to what the sponsor wanted. That would be a radical change in terms of current law.

REPRESENTATIVE MOLNAR stated that the six hours which is allowed is considered holding as well as detention.

Vote: The motion FAILED on oral vote.

Discussion: **REPRESENTATIVE MOLNAR** explained the amendments on page 7, no. 9. Under current statutes, if a youth spends two

days in detox due to a serious drug overdose and then explains the drugs he was using and where he bought or sold the drugs to the county attorney or the police officer but does not tell the judge, it is not admissible. This would allow that a judge may order a urine analysis to determine whether or not the confession was valid. The amendment on page 8 deals with petitions and affidavits focusing on allegations against offender and proven facts. Currently, if a parent finds drug paraphernalia and takes it to the police station, they are not able to do anything. This would keep the focus on the youth.

Ms. Gilkey stated the amendment simply wanted some probable cause finding by the court prior to the order of a urinalysis so that a child's rights are protected. It would be in the court's discretion to decide if it was constitutional to charge a youth with a violation of a drug offense and whether a subsequent ordered urinalysis on a regular basis would be violating the child's rights. The House amendment stated that the court had to make an actual finding of some chemical violation prior to ordering urinalysis. This deals with youth's rights. The petitions she has seen are simply allegations which have not been proven. This may tie the hands of the county attorney.

Motion/Vote: SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGES 7 AND 8 OF HB 540 DO NOT PASS. The motion CARRIED on oral vote.

Discussion: REPRESENTATIVE MOLNAR explained the amendments on page 9, 1(). Currently, if a youth has an SED label, even though he knows it is not right to deal drugs, etc., he knows that he cannot go to Pine Hills. He may go into day treatment. The SED label is overly broad. A truly mentally ill youth will not go to Pine Hills. This amendment would not take out any current practice.

Ms. Gilkey stated the language stricken on page 9 was negotiated long and hard with Montana Advocacy Program and others who were very concerned about seriously mentally ill youth at Pine Hills and Mountain View Schools. They were threatened with federal lawsuits. They tied this language into existing statutes and definitions and in judicial process to where courts make the determination whether a youth is mentally ill or seriously mentally ill. There are youth at both facilities who are SED. When they cross the threshold to seriously mentally ill, they do not have the capability for them at a state correctional facility. The amended language uses mental disease or mental defect which are not tied into current definitions in law. They prefer the existing language which they know how to use and negotiate with the concerned advocates for the mental health rights of children.

Mr. Hemion stated the other issue is whether a facility like Pine Hills has the ability to provide any treatment for seriously mentally ill children. If there is any possibility that those children would be placed there, that would put a different

program in need of being funded and organized for that facility. They would like to keep the law the way it is.

SENATOR BARTLETT commented that page 12, (15)(a) states that each county shall establish public works projects for offending youth. She asked Gordon Morris, MACO, what the impact of that would be on the counties. Are there counties which do not have public works projects for offending youth? Mr. Morris stated that in terms of adult corrections there would be the community service option afforded to local governments. They do not have an existing youth counterpart to that. They would need to provide necessary supervision and take into account the liabilities associated with being underage in a working environment.

SENATOR HALLIGAN asked if there would be federal issues to deal with in mixing populations of seriously mentally ill youth with violent offenders at Pine Hills.

Ms. Gilkey stated that was the primary issue of the Department of Criminal Juvenile Justice of the Civil Rights Division of the Federal Government. They were looking very closely at that issue and would use it as the basis for their lawsuit. The youth's civil rights would be violated by housing mentally ill youth in a facility which would not have the staff or expertise to monitor or treat a youth who is seriously mentally ill.

SENATOR HALLIGAN stated the Office of Juvenile Justice just completed an investigation. He asked if there was language in their report which would deal with this issue?

Ms. Gilkey stated they continue to be interested in this issue and all their correspondence continues to stress this point.

Ms. Lane stated that what is being discussed right now is amendment no. 11 which begins on page 8 and does not end until page 9. This would be listed as page 9 on the narrative.

SENATOR BARTLETT stated that page 8 also included amendment no. 11.

Ms. Lane stated that on page 8 the very first amendment goes to another amendment. If that was accepted, she would have to put the language in. If (15) was not accepted, she would leave that out of the amendment. (1)(a)(i) is not discussed in the narrative.

SENATOR BARTLETT asked if (1)(a)(i) would be part of the motion to amend?

CHAIRMAN CRIPPEN stated that would not be included.

The committee offered no motion to act on the above amendments.

REPRESENTATIVE MOLNAR explained the second amendment on page 9. The youth involved in youth in need of care are youth who have a lot of status offenses. However, quite often these are the most serious charges a youth may face. This amendment states a youth in need of supervision may not be placed in a youth correctional facility. Currently, a delinquent youth can be sent to a state facility. If the charge is youth in need of supervision, that youth may not be sent to a state facility. This would have the judge go with the actual facts of what the crime would be.

Ms. Gilkey stated this amendment would not address the problem. Currently a judge decides where a youth should go. The stricken language deals with a commission of an act which would not be a criminal offense if committed by an adult. Assault is a criminal act if committed by an adult. The youth they do not want placed in a state youth correctional facility are the pure status offenders. If an adult possess alcohol, that is not a crime. If a juvenile does, it is. Those are the juvenile offenses for which they do not want a youth placed in a youth correctional facility with the more violent youthful offenders. This bill would not address REPRESENTATIVE MOLNAR's concern. Judges currently could place a delinquent youth or youth in need of supervision who had committed criminal acts in a state youth correctional facility. It is the youth who have not committed a criminal act that cannot be placed there. She urged this amendment not be accepted.

CHAIRMAN CRIPPEN asked SENATOR HALLIGAN how the youth would be charged?

SENATOR HALLIGAN stated there would be discretion on the part of the probation officer. If the probation officer feels this can be handled through a youth in need of supervision process, that is what he will recommend. If the child is out of control, the criminal charge could be made.

Ms. Gilkey stated that if a youth is placed on probation as a youth in need of supervision, violating the terms of that probation could cause the youth to be labeled a delinquent youth. If the violation of their probation is truancy, they still have not created a crime. A judge can impose criminal contempt of court, which is a crime and then they would be sent to a correctional facility. There are ways to get out of control youths in need of supervision into a secure state youth correctional facility.

Motion/Vote: SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGES 9 2 (A) DO NOT PASS. The motion CARRIED on oral vote with SENATOR JABS voting "NO".

REPRESENTATIVE MOLNAR explained the amendments on page 12. The point system would give a measurable consequence to a youth at the entry level into crime. Everyone agrees that we are wasting our money trying to stop crime by nipping it in the blossom part

of a career. When a youth commits his first status offense, he would be given a point to let him know that he is being watched. A status offense is one point and a felony is three points. The average felony gets nothing right now. A second felony would be six points and he would then get five days of lock down. The counties feel this would be onerous on them. If five days detention for two felonies is onerous, what are they currently doing? There are youths with up to six felonies who do not even see a judge. The predatory youth program would deal with identifying the ring leaders. This would not be the youth who is caught with the drugs. It would be the youth who sold it to him. This would not be the person who stole the car; however, it would be the youth who talked him into it and had a guaranteed buyer. When they set up this program in California, the juvenile crime rate dropped 70%. Juvenile crime in Yellowstone County is going up 100% per biennium. In Gallatin County 75% of the violent felonies involve juveniles. If a youth has a substance abuse problem, they put them in a treatment center.

Mr. Morris stated that last week they sent out a questionnaire to the counties. Right now counties have a 96 hour holdover capability. This would expand that by another 24 hours with the five day provision. Lincoln County commented that if they had to transfer the youths to Kalispell where the regional facility is located for purposes of holding them for five days, the total new cost to Lincoln County would amount to \$39,930. Blaine County felt the point system would impact them financially. They do not lock up youth in detention for punishment. Detention lacks programs to rehabilitate the youth. Yellowstone County stated the impact of this proposal would affect them in the amount of \$500,000 relative to construction of four additional cells. They would anticipate a need for an additional eight. Other counties have indicated they are unable to support a free standing detention facility.

REPRESENTATIVE MOLNAR stated that most of the concerns of the counties were from the bill as originally written which allowed incarceration in an adult jail. The bill currently takes the cap off of five regions. Some of the counties are spending \$25,000 to \$30,000 a year transporting these youth to get them to a detention center. Currently fifty percent of the juvenile probation officers do not have community service as an option.

SENATOR HALLIGAN asked about the accessibility of the OJJD money?

Mr. Kiser stated there are federal requirements attached to those juvenile justice funds. The governor has to appoint a committee who then receives the funds and the committee must have certain constituencies on it to represent the youth in Montana as well as elected officials and local government. The committee makes recommendations as to how the funds will be used through a grant process. This bill mandates that the Board of Crime Control shall appropriate those funds to county government. That

presents a problem of running the risk of not meeting the requirements set out by the federal government. They are also required to develop a three year plan which is updated every year.

SENATOR HALLIGAN stated the lottery money, along with the OJJDP money, went for shelter care, regional detention, and transportation.

Mr. Kiser stated that is primarily where the money goes. It goes for the detention facilities for the five regions which were established. SB 83 has taken the earmarked funds and placed them into the general fund.

SENATOR HALLIGAN asked if every county applied for assistance to offset juvenile costs?

Mr. Kiser stated that this is set up into five regions within the state.

SENATOR HALLIGAN asked if there were any problems with the existing disbursement of funds in the regional detention districts.

Mr. Kiser answered there are some problems. They introduced a bill which would allow them to assist the jurisdictions which have a overrun in their budget based upon an adverse impact of detaining juveniles.

SENATOR JABS stated that it appeared that the DFS is resisting every effort to get tougher on juvenile crimes.

Ms. Gilkey stated the parties worked for weeks with REPRESENTATIVE MOLNAR to address his revision of the Youth Court Act. These amendments are new and they are asked again to compromise. They have compromised as far as they can without jeopardizing the current system too much. This section costs money to the counties and to the state. There are violations of youths rights. It also has determinate sentencing which will be a direct cost to the state if the state has no control of the release of youth. For the last three years the DFS has been working with the Center for the Study of Youth Policy. For six months they field tested a risk assessment which is a point system. The probation officers are using it. They did not feel it was ready to be codified. Their current risk assessment conflicts with this point system.

Motion/Vote: SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 12 (15)-(18) DO PASS. The motion FAILED on oral vote.

Discussion: REPRESENTATIVE MOLNAR explained the amendments on page 13, schools to reject placement of youth with active chemical or criminal issues. If a youth has been convicted of alcohol or drug possession, the schools may be notified if there

is a program in place for the youth. If the youth is selling drugs, the school is not allowed to know. If the youth is a violent sexual offender, he is taken out of one school and placed into another without informing the school of the problem. The school is not aware of the need to watch the youth. This amendment deals with a youth having an active chemical or criminal issue. The school would be notified and can decide under what conditions they can accept or reject the youth. When a youth is moved from one school to another, all that is accomplished is to spread the drug problem. Possible options would be alternative schools, private schools, home schooling, or sending the homework home. The youth is not dealing drugs in school. The youth is removed until he is rehabilitated and ready to learn without being a danger to the other children.

CHAIRMAN CRIPPEN stated he had a hard time reading that section and asked **REPRESENTATIVE MOLNAR** to explain his intent.

REPRESENTATIVE MOLNAR commented this dealt with a youth involved with active issues relating to drug use or crimes who has been placed in foster care. The court would notify the school of the issues involved with that youth and the school may refuse to accept the youth as a student.

Ms. Lane stated it should state this addresses the school the youth will attend during foster care placement.

REPRESENTATIVE MOLNAR explained that his intent addresses when a youth is picked up for a crime the school be notified and when transferred to another school, the school would have the right to reject the placement and could make up the rules of acceptance or refusal of such youth. If the rules are not in effect at the time, the youth would be grandfathered in.

Ms. Gilkey commented there would be some legal issues regarding this section. In (4) an existing statute allows the sharing of the identity of a youth. This is a disclosure to the school officials in which that student is enrolled. The school then needs to look at their policies regarding substance abuse and whether or not that youth can play basketball or football or needs treatment. If a youth is under 16 and has active alcohol problems and is in foster care, providing the school with this information may violate the Montana State Constitution of the right to an education to reject them for that disability. Alcohol addiction is a disability. Schools could run into problems. It would be good for the schools to adopt policies related to this issue.

SENATOR DOHERTY stated if these youth are placed in foster care and then the school is allowed to refuse to accept that youth, how would the foster care parents deal with this as a practical matter?

Ms. Gilkey stated that would be a problem. The schools can find out about any child with alcohol issues under existing law and deal with them appropriately. Allowing the schools to reject students in foster care could cause extreme hardship on finding placement for these youth.

CHAIRMAN CRIPPEN asked Ms. Gilkey if keeping the last sentence to the amendment would cause any problems. This dealt with each school district adopting rules to govern acceptance or refusal of such a youth.

Ms. Gilkey stated they would need to define "such youth" and make other clarifications. The rulemaking would be a fine idea.

Motion: SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 13, Section 18(b).

SENATOR HALLIGAN stated there would be a practical problem because the school districts have a compulsory education requirement. This would lead to a constitutional problem.

Result: The motion TIED on oral vote.

CHAIRMAN CRIPPEN stated they passed a bill which dealt with the amendment on page 14.

REPRESENTATIVE MOLNAR stated everyone has agreed that they need immediate, enforceable and consistent consequences. Picking up a youth only to release him reinforces to that youth that nothing will happen.

Motion/Vote: SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 14 DO NOT PASS. The motion CARRIED on oral vote with SENATOR JABS voting "NO".

REPRESENTATIVE MOLNAR explained the additional amendments, EXHIBIT 3. In Laurel they have two new cells which are secure and can handle incarceration of youths. They are not licensed because they are adult facilities and there is a need for the sight and sound separation. They normally have two people per month who stay overnight. On the days adults are not there, they could incarcerate juvenile offenders. This amendment would mandate that the Department of Family Services would make the rules which would allow for a provisional license providing that there are no adults in the cells they could then be used for youth.

SENATOR HOLDEN asked REPRESENTATIVE MOLNAR if youths would be next to adults in these cells.

REPRESENTATIVE MOLNAR stated the sight and sound provision would still have to be maintained.

Mr. Kiser stated one of the problems would be in the supervision and training necessary for the personnel. The site in Laurel is probably supervised by a dispatcher who has had no training for supervising youth in incarceration.

REPRESENTATIVE MOLNAR stated the training requirement is 16 hours. This is not very much.

SENATOR BAER stated in Flathead County the jails are crammed, they do not know how to deal with the influx of people in their jails. Would they be required to accept the youths?

REPRESENTATIVE MOLNAR answered this would be discretionary. They would have a choice on whether or not to apply for the licensing necessary.

SENATOR HALLIGAN commented he had a problem with the phrase "not to exceed 10 days" being placed into the statute because the wording came out of nowhere. They are trying to deal with federal rules and other requirements they have been working with for some time.

Motion/Vote: SENATOR HOLDEN MOVED THE LAST AMENDMENT DO PASS.
The motion FAILED on oral vote.

SENATOR BAER stated that in recent years they had a halfway house for youth who attended the Bigfork school system and caused immeasurable grief to the student body and staff by their sometimes criminal actions. He believed schools should have the discretion to avoid that type of situation and also to have the duty to protect the good children from the bad children.

Vote: SENATOR BAER voted "YES" on the amendment on page 13.

EXECUTIVE ACTION ON SB 136

Discussion: SENATOR HOLDEN stated he had three sets of amendments he wished to present separately, EXHIBIT 4. The first amendment was on page 6, line 25. He suggested striking the words "affecting the constituents" and inserting "required in legislative rules". This would pinpoint the language to the legislative rules.

SENATOR BAER commented that the intent for the language was to require legislators to vote on matters even though that might represent an apparent conflict which had been properly disclosed by that legislator to the appropriate person. He agreed the language was somewhat vague.

SENATOR DOHERTY commented that it was a good amendment. If constituents had a meeting and wanted their legislator there, this would say that a legislator had a responsibility to his or her constituents to participate in all matters respecting the constituents. This language could give them a cause of action

EXECUTIVE ACTION ON HB 540

Discussion: CHAIRMAN CRIPPEN stated on page 13, Section 18 (b) the two votes which were held opened changed the vote to 6 to 5 in favor to amend.

Motion: SENATOR HALLIGAN MOVED HB 540 AS AMENDED BE NOT CONCURRED IN.

Discussion: SENATOR HALLIGAN stated the amendment violated the Americans with Disabilities Act. This would allow school districts to reject youths with an alcohol problem. They could accept the last sentence and allow the school districts to deal with some discretion.

CHAIRMAN CRIPPEN stated there could be a floor amendment which would deal with allowing school districts to have their own rules. The rest could be stricken.

Motion: SENATOR BISHOP MOVED TO RECONSIDER THE VOTE ON THE AMENDMENT ON PAGE 13.

Vote: The motion CARRIED on oral vote.

SENATOR HALLIGAN WITHDREW HIS MOTION HB 540 AS AMENDED BE NOT CONCURRED IN.

Motion: SENATOR HOLDEN MOVED NOT TO ACCEPT THE AMENDMENT ON PAGE 13 OF HB 540.

Vote: The motion CARRIED on oral vote.

Motion: SENATOR HALLIGAN MOVED HB 540 BE CONCURRED IN.

Vote: The motion CARRIED on oral vote.

DATE _____

3/08/95

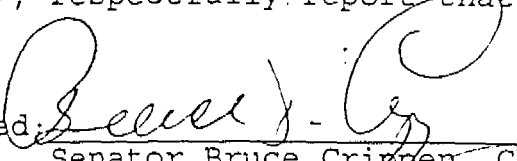
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SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 28, 1995

MR. PRESIDENT:

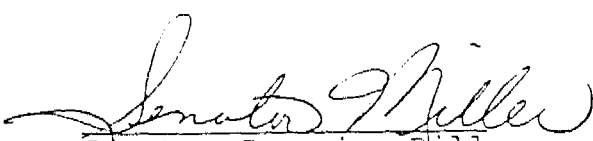
We, your committee on Judiciary having had under consideration HB 540 (third reading copy -- blue), respectfully report that HB 540 be concurred in.

Signed: 

Senator Bruce Crippen, Chair

 Amd. Coord.

571 Sec. of Senate


Senator Carrying Bill

711334SC.SPV

Amendments to House Bill No. 540
Third Reading, Second Printing, Copy

Requested by Rep. Molnar
For the Committee on the Judiciary

Prepared by John MacMaster
March 27, 1995

1. Title, line 7.

Following: "~~41-5-301,~~"

Insert: "41-5-203, 41-5-206, 41-5-301,"

Following: "~~41-5-305,~~"

Insert: "41-5-305,"

Following: "~~41-5-401,~~"

Insert: "41-5-313, 41-5-401,"

2. Title, line 8.

Following: line 7

Insert: "41-5-521,"

Following: "~~41-5-601,~~"

Insert: "41-5-523, 41-5-529, 41-5-601,"

Following: "~~41-5-703,~~"

Insert: "41-5-703,"

3. Title, line 9.

Following: "~~41-5-810,~~"

Strike: "AND"

Insert: "41-5-810,"

Following: "41-5-811,"

Insert: "AND 41-5-812,"

4. Page 10, line 20.

Strike: "give"

Insert: "require"

Following: "prescribed"

Insert: "to take"

5. Page 10, line 21.

Following: "CHILD"

Insert: "as part of a treatment plan pursuant to 53-21-145"

6. Page 23, line 5.

Insert: "Section 4. Section 41-5-203, MCA, is amended to read:

"41-5-203. Jurisdiction of ~~the court courts~~. (1) ~~Except as provided in subsection (2), the~~ The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care ~~or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.~~

(2) Justice, municipal, and city, and district courts have

concurrent jurisdiction with the youth court over all alcoholic beverage and gambling violations alleged to have been committed by a youth a person under 21 years of age who is charged with a violation of any state criminal or other law or municipal ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them jurisdiction over the violation charged."

Section 5. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (A) negligent homicide as defined in 45-5-104;
- (B) arson as defined in 45-6-103;
- (C) aggravated or felony assault as defined in 45-5-202;
- (D) robbery as defined in 45-5-401;
- (E) burglary or aggravated burglary as defined in 45-6-204;
- (F) aggravated kidnapping as defined in 45-5-303;
- (G) possession of explosives as defined in 45-8-335;
- (H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

- (i) the youth committed the delinquent act alleged;
- (ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and
- (iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following

factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute is deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) (a) A youth's first violation of a state criminal or other law or municipal ordinance that is a misdemeanor may be handled by the probation officer pursuant to 41-5-401, or the probation officer may refer the youth to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other appropriate proceeding in a court having jurisdiction over the violation.

(b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or other proceeding as provided in subsection (9) (a).

~~(9) (10) A youth whose case is transferred to district court~~

who is charged with a crime may not be detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition of ~~his~~ the case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 6. Section 41-5-301, MCA, is amended to read:

"41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof of an order, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter ~~shall~~ must be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether ~~such~~ the detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and ~~his~~ the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation, or detention, treatment, or a placement;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided ~~such~~ the treatment or adjustment is voluntarily accepted

by the youth's parents or guardian and the youth, and provided further that ~~said the~~ matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney or a youth placement committee, whichever is appropriate; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.

(6) The county attorney may either:

(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(b) file a complaint or other proceeding under 41-5-206.

(7) A petition, complaint, or other proceeding charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or ~~the petition shall be dismissed and~~ the youth must be released unless good cause is shown to further detain ~~such the~~ youth.

(8) If ~~no a~~ a petition, complaint, or other proceeding is not filed under this section, the complainant and victim, if any, ~~shall must~~ be informed by the probation officer of the action and the reasons ~~therefor for the action~~ and ~~shall must~~ be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition, complaint, or other proceeding shall be is to be filed."

Renumber: subsequent sections

7. Page 24, line 16.

Insert: "Section 8. Section 41-5-305, MCA, is amended to read:

"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities. (1) A youth may not be placed in a secure detention facility unless:

(a) ~~he the youth~~ has allegedly committed ~~an act that if committed by an adult would constitute a criminal offense and the alleged offense is one~~ specified in 41-5-206;

(b) ~~he the youth~~ is alleged to be a delinquent youth and:

(i) ~~he the youth~~ has escaped from a shelter care facility, correctional facility, or secure detention facility;

(ii) ~~he the youth~~ has violated a valid court order or an aftercare agreement;

(iii) ~~his the youth's~~ detention is required to protect persons or property;

(iv) ~~he the youth~~ has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that ~~he the youth~~ will appear for court when required; or

(vi) ~~he the youth~~ meets additional criteria for secure

detention established by the youth court in the judicial district that has current jurisdiction ~~over him~~; or

(c) ~~he~~ the youth has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and ~~his~~ the youth's family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of ~~his~~ the troubling behavior;

(d) shelter care is necessary to assess the youth and ~~his~~ the youth's environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.""

Renumber: subsequent sections

8. Page 27, line 6.

Insert: "Section 10. Section 41-5-313, MCA, is amended to read:

"41-5-313. Permitted acts -- detention of youth in law enforcement facilities -- criteria. ~~(1) Nothing in this~~ This chapter precludes does not include the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;~~

~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;~~

~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

~~(d) the area is not designed or intended to be used for residential purposes; and~~

~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.~~

~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will."~~

Section 11. Section 41-5-401, MCA, is amended to read:

"41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the ~~child~~ youth, the youth's family, and the public; and

(c) the youth may be a youth in need of supervision and if the probation officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment ~~shall~~ must be reduced to writing and signed by the youth and ~~his~~ the youth's parents or the person having legal custody of the youth.

(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(d) If a placement of the youth is made, it must be by the youth placement committee pursuant to 41-5-526 and 41-5-527."

Renumber: subsequent sections

9. Page 29, line 16.

Strike: "FINDING"

Insert: "charge"

10. Page 30, line 18.

Insert: "Section 14. Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, ~~his~~ or the youth's parent, guardian, or attorney may demand a jury trial on ~~such~~ the contested offenses. In the absence of ~~such~~ a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing ~~shall~~ must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing ~~shall~~ must be held to determine whether the contested offenses are supported by proof beyond a

reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The petition and affidavits may not contain allegations against persons other than the youth that have not been admitted or proved.

(3) An adjudicatory hearing ~~shall~~ must be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."

Renumber: subsequent sections

11. Page 39.

Following: line 30

Insert: "Section 16. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions. (1) ~~If~~ Except as provided in subsection (15), if a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:

(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth, the youth's family, and the community and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for

the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(c) order restitution by the youth or the youth's parents;
(d) impose a fine as authorized by law if the violation ~~alleged would constitute is~~ a criminal offense ~~if committed by an adult;~~

(e) require the performance of community service;
(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth, the youth's family, and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated ~~mentally ill or seriously mentally ill as defined in 53-21-102~~ may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or unable to conform the youth's behavior to the requirements of law after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) ~~A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

~~(b)~~ A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. ~~Nothing in this~~ This section limits does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

~~(e)(b)~~ A youth may ~~not~~ be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order

pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12) (b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department

of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(15)(a) A misdemeanor counts as one point, and a felony counts as three points. An offense that can be committed by a person only because of age counts as one point. Upon accumulating six points, a youth must be placed in a secure detention facility for not less than 5 days, and upon accumulating nine points, a youth must be placed in a secure detention facility for not less than 10 days. The staff of the secure detention facility must be properly trained in and give the youth counseling. Each county shall establish public works projects for offending youth.

(b) Upon accumulating 10 points, a youth may be designated as a "habitual offender" and may be placed in the custody of the department for not less than 90 days.

(c) If the court finds that a habitual offender commonly entices or assists other youth to perform illegal acts, the youth must be designated as a "predatory youth" and must be placed in a the custody of the department for not less than 180 days.

(d) Law enforcement, educational, and social service agencies, the court, and other agencies and entities involved with a youth who is found by the court or believed by the agency or entity to be a delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for the county in which the youth resides with any information in the possession of the agency or entity that may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.

(16) If a youth who is serving time in a state youth correctional facility because the youth was found to be a habitual offender or a predatory youth needs and is willing to accept advanced treatment for behavioral, substance abuse, or similar problems, the youth may be transferred to a residential treatment facility, but not until after the youth has served at least one-half of the imposed detention period. The department shall solicit requests for proposals for inpatient treatment of youth. A district judge may sentence a youth directly to an unused bed at a state youth correctional facility at county expense after the budgeted number of juvenile residents is reached.

(17) After determining the sources and amounts of funding, the youth court shall order the entities, agencies, or political subdivisions administering funds involving services to which youth are entitled to ensure that a youth's share of the funds follows the youth to the location of the youth's placement. Upon receipt of a completed application for services, the collection of funding and assignment of funding to the appropriated agency or entity must be enforced by the department of social and rehabilitation services through any remedy available to that department for the collection of child support.

(18) Before a youth is released from a state youth

correctional facility, the department shall adopt and the court shall approve a written supervision plan.

(19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over the youth is transferred to the department of corrections and human services, which shall make an appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.

(b) When a youth is transferred to the department of corrections and human services, the department of family services shall transmit to the department of corrections and human services the dispositional judgment, copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(c) The department of corrections and human services shall confine the youth in whatever institution it considers proper, including a youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison."

Section 17. Section 41-5-529, MCA, is amended to read:

"41-5-529. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department. Purposeful violation of the confidentiality requirements is a criminal offense and a person convicted of violating the requirements shall be fined \$1,000."

Section 18. Section 41-5-601, MCA, is amended to read:

"41-5-601. Confidentiality. (1) (a) ~~No~~ Except as provided in subsection (1) (b), information shall ~~may not~~ be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

(b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster care, the court shall notify the school that the youth will attend of the issues and the school may refuse to accept the youth as a student. Each school district shall adopt rules to govern acceptance or refusal of such youth.

(2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged with or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. All court proceedings

must be open to the public with the exception of the transfer hearing specified in 41-5-206 if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of any a youth who admits violating or is adjudicated as having violated ~~45-5-624 or 45-9-102~~ may a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may ~~not~~ be further disclosed and but may not be made part of the student's permanent records." "

Renumber: subsequent sections

12. Page 40, line 30.

Insert: "Section 20. Section 41-5-703, MCA, is amended to read:

"41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his the officer's supervision. The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not placed in a detention center or facility complies with the orders of the court.

(d) perform any other functions designated by the court.

(2) A probation officer ~~shall have no power to~~ may make arrests ~~or to~~ and perform any other law enforcement functions function in carrying out his the officer's duties, ~~except that a probation officer may take~~ including taking into custody any a youth who violates either his probation or a lawful order of the court." "

Renumber: subsequent sections

13. Page 42, line 4.

Insert: "Section 22. Section 41-5-810, MCA, is amended to read:

"41-5-810. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth ~~in facilities separate from adult jails and space must be found for a youth in need of detention. A youth may not be released from detention because of space problems. An arresting officer may place the youth in a detention center.~~

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. ~~The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

(3) Each county, ~~or regional, municipal, or state~~ detention facility ~~of any type, detention center of any type, shelter care facility, or holdover~~ must be licensed by the department in accordance with rules adopted under 41-5-809."

Renumber: subsequent sections

14. Page 47, line 26.

Insert: "Section 24. Section 41-5-812, MCA, is amended to read:

~~"41-5-812. Creation of regions -- requirements -- limitation on number of regions.~~ (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

~~(a) be composed of contiguous counties participating in the regional detention facility; and~~

~~(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.~~

~~(3) There may be no more than five youth detention regions established in the state at any one time."~~

NEW SECTION. Section 25. Cost savings -- allocation -- implementation funding. (1) One-half of the efficiency savings, other savings, and earned income derived from implementation of [this act] must be dispensed by the department of family services to the counties, based on the percentage of the state's total number of juvenile offenders in a given county, to help offset the costs of implementing [this act]. The department may retain the other half and use it for capital improvements and costs associated with the department's implementation of [this act].

(2) Discretionary funds received by the board of crime control from the federal office of juvenile justice and delinquency prevention must be dispensed by the board to the counties, based on the percentage of the state's total number of juvenile offenders in a given county, to help offset the costs of implementing [this act]."

HB 540 - Narrative on Amendments

by Rep. Brad Molnar

March 28, 1995

- * * page 1 5) Allows parents to enforce prescribed treatment plan
- * * page 1 6) Opens city and justice courts to minor youth crime
- * page 3 9) Returns original language of age limitations and limits non-court consequences
- page 4 5a) Placement must go through placement committee
- * page 5 7) bi Escape from shelter care to allow placement in secure detention
- page 6 8) Allows youth to be held in secure setting, or be handcuffed in police station. Federal regulations allow for up to six hours.
- * page 7 9) Upon charge of illegal use of drugs or alcohol a judge may order a urine analysis
- page 8 41-5-521 (2) Petitions and affidavits must focus on allegations against offender and proven facts
- page 9 1 () Youth must be able to appreciate the criminality of his act to be placed in youth detention facility
- page 9 2A Youth in need of supervision may be placed in youth detention facility
- * page 12 (15)-(18) Point system - transfer of existing funding. Guaranteed treatment.
- * * page 13 Sec 18(b) Allows school to reject placement of youth with active chemical or criminal issues.
- page 14 Section 22 Arresting officer may place youth in detention center. Space must be provided.

Failed

EXHIBIT NO. 3
DATE 3/28/95
FILE NO. SB 136

Amendments to House Bill No. 540
Third Reading, Second Printing, Copy

Requested by Rep. Molnar
For the Committee on the Judiciary

Prepared by John MacMaster
March 28, 1995

1. Title, line 9.
Following: "~~41-5-810,~~"
Insert: "41-5-810,"

2. Page 42, line 4.

Insert: "Section 11. Section 41-5-810, MCA, is amended to read:

"41-5-810. County responsibility to provide youth detention services. (1) ~~Each Except as provided in subsection (4), each~~ county shall provide services for the detention of youth in facilities separate from adult jails.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-809.

(4) The department shall adopt rules allowing and regulating the detention of youth in adult jails for a period not to exceed 10 days for each incarceration if the youth are separated from adults by sight and sound."

Renumber: subsequent section

GOVERNOR'S AMENDMENTS TO
HOUSE BILL NO. 540
(REFERENCE COPY)
April 10, 1995

1. Page 23, line 11.

Following: "~~would be~~"

Insert: "conduct alleged to be unlawful that would be"

Following: "felony"

Insert: "if committed by an adult"

HOUSE BILL NO. 540

INTRODUCED BY MOLNAR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA YOUTH COURT ACT;
AND AMENDING SECTIONS ~~7-32-2244, 39-71-117, 39-71-118, 39-71-774, 39-71-117, 39-71-118,~~
~~39-71-774,~~ 40-6-233, 41-3-102, 41-5-102, 41-5-103, 41-5-203, 41-5-204, 41-5-205, 41-5-206,
41-5-301, 41-5-304, 41-5-305, 41-5-306, 41-5-307, 41-5-313, 41-5-401, 41-5-403, 41-5-514, 41-5-521,
41-5-522, 41-5-523, 41-5-526, 41-5-527, 41-5-529, 41-5-533, 41-5-601, 41-5-604, 41-5-703, 41-5-802,
41-5-810, AND 41-5-811, 41-5-812, 41-5-1001, 41-5-1004, 52-5-120, 53-21-162, AND 53-21-506,
MCA; AND REPEALING SECTIONS 41-5-106, 41-5-310, 41-5-311, AND 41-5-809, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 7-32-2244, MCA, is amended to read:~~

~~"7-32-2244. Detention of juveniles. Juveniles may be held in a detention center only in accordance
with 41-5-301 through 41-5-307, and 41-5-309, and 41-5-311."~~

~~Section 2. Section 39-71-117, MCA, is amended to read:~~

~~"39-71-117. Employer defined. (1) "Employer" means:~~

~~(a) the state and each county, city and county, city school district, irrigation district, all other
districts established by law, and all public corporations and quasi-public corporations and public agencies
therein and every person, every prime contractor, and every firm, voluntary association, and private
corporation, including any public service corporation and including an independent contractor who has any
person in service under any appointment or contract of hire, expressed or implied, oral or written, and the
legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;~~

~~(b) any association, corporation, or organization that seeks permission and meets the requirements
set by the department by rule for a group of individual employers to operate as self insured under plan
No. 1 of this chapter; and~~

~~(c) any nonprofit association or corporation or other entity funded in whole or in part by federal,
state, or local government funds that places community service participants, as defined in~~

~~39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.~~

~~(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.~~

~~(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:~~

~~(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and~~

~~(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.~~

~~(4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:~~

~~(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or~~

~~(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."~~

Section 3. Section 39-71-744, MCA, is amended to read:

"39-71-744. Benefits not due while claimant is incarcerated—exceptions. (1) Except as provided in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical

benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)(1)(e)."

Section 4. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on the job vocational rehabilitation training or other on the job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d)(e) students enrolled and in attendance in programs of vocational technical education at

designated vocational technical centers;

~~(e)(d) an aircrew member or other person employed as a volunteer under 67-2-106;~~

~~((f)(e) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection ((f)(1)(e):~~

~~((i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and~~

~~((ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.~~

~~((g)(f) an inmate working in a federally certified prison industries program authorized under 53-1-301.~~

~~(2) The terms defined in subsection (1) do not include a person who is:~~

~~(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or~~

~~(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.~~

~~(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.~~

~~(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.~~

~~(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.~~

~~(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.~~

~~(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than \$800 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.~~

~~(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.~~

~~(6) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).~~

~~(7) For purposes of this section, an "employee or worker in this state" means:~~

~~(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;~~

~~(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;~~

~~(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or~~

~~(d) a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:~~

~~(i) nonresident employees are hired in Montana;~~

~~(ii) nonresident employees' wages are paid in Montana;~~

~~(iii) nonresident employees are supervised in Montana; and~~

~~(iv) business records are maintained in Montana.~~

~~(8) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."~~

1 SECTION 2. SECTION 39-71-117, MCA, IS AMENDED TO READ:
2 "39-71-117. Employer defined. (1) "Employer" means:
3 (a) the state and each county, city and county, city school district, irrigation district, all other
4 districts established by law, and all public corporations and quasi-public corporations and public agencies
5 therein and every person, every prime contractor, and every firm, voluntary association, and private
6 corporation, including any public service corporation and including an independent contractor who has any
7 person in service under any appointment or contract of hire, expressed or implied, oral or written, and the
8 legal representative of any deceased employer or the receiver or trustee thereof of the deceased employer;
9 (b) any association, corporation, or organization that seeks permission and meets the requirements
10 set by the department by rule for a group of individual employers to operate as self-insured under plan
11 No. 1 of this chapter; and
12 (c) any nonprofit association or corporation or other entity funded in whole or in part by federal,
13 state, or local government funds that places community service participants, as defined in
14 39-71-118(1)(f)(1)(e), with nonprofit organizations or associations or federal, state, or local government
15 entities.
16 (2) A temporary service contractor is the employer of a temporary worker for premium and loss
17 experience purposes.
18 (3) An employer defined in subsection (1) who utilizes the services of a worker furnished by
19 another person, association, contractor, firm, or corporation, other than a temporary service contractor,
20 is presumed to be the employer for workers' compensation premium and loss experience purposes for work
21 performed by the worker. The presumption may be rebutted by substantial credible evidence of the
22 following:
23 (a) the person, association, contractor, firm, or corporation, other than a temporary service
24 contractor, furnishing the services of a worker to another retains control over all aspects of the work
25 performed by the worker, both at the inception of employment and during all phases of the work; and
26 (b) the person, association, contractor, firm, or corporation, other than a temporary service
27 contractor, furnishing the services of a worker to another has obtained workers' compensation insurance
28 for the worker in Montana both at the inception of employment and during all phases of the work
29 performed.
30 (4) Notwithstanding the provisions of subsection (3), an interstate or intrastate common or contract

1 motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is
2 liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:
3 (a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3);
4 or
5 (b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a
6 motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception
7 of employment and during all phases of the work performed."
8
9 SECTION 3. SECTION 39-71-744, MCA, IS AMENDED TO READ:
10 "39-71-744. Benefits not due while claimant is incarcerated — exceptions. (1) Except as provided
11 in subsection (2), a claimant is not eligible for disability or rehabilitation compensation benefits while the
12 claimant is incarcerated in a correctional institution, such as the Montana state prison or the Montana
13 women's correctional center, as the result of conviction of a felony. The insurer remains liable for medical
14 benefits. A time limit on benefits otherwise provided in this chapter is not extended due to a period of
15 incarceration.
16 (2) A person who is employed while participating in a prerelease center program or a diversionary
17 program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a
18 work-related injury received while participating in a prerelease center program or a diversionary program.
19 Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease
20 center. This subsection does not prohibit the reinstatement of other benefits upon release from
21 incarceration, nor does it apply to an employee performing community service described in 30-71-118(1)(f)
22 (1)(e)."
23
24 SECTION 4. SECTION 39-71-118, MCA, IS AMENDED TO READ:
25 "39-71-118. Employee, worker, and volunteer firefighter defined. (1) The terms "employee" or
26 "worker" means:
27 (a) each person in this state, including a contractor other than an independent contractor, who is
28 in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire,
29 expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully
30 employed, and all of the elected and appointed paid public officers and officers and members of boards of

directors of quasi-public or private corporations while rendering actual service for the corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on the job vocational rehabilitation training or other on the job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined in this subsection while they are on the premises of a public school or community college.

(d)(e) students enrolled and in attendance in programs of vocational technical education at designated vocational technical centers;

(e)(f) an aircrew member or other person employed as a volunteer under 67-2-106;

(f)(g) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f)(1)(g):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g)(h) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing

prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

(3) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(4) (a) If the employer is a partnership or sole proprietorship, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of an election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (4)(d). A partner or sole proprietor is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than \$900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter.

(5) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(6) An employee or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(7) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) ~~a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;~~

(c) ~~a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or~~

(d) ~~a nonresident of Montana who does not meet the requirements of subsection (7)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:~~

~~(i) nonresident employees are hired in Montana;~~

~~(ii) nonresident employees' wages are paid in Montana;~~

~~(iii) nonresident employees are supervised in Montana; and~~

~~(iv) business records are maintained in Montana.~~

(8) ~~An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (7)(b) or (7)(d) as a condition of approving the election under subsection (7)(d)."~~

Section 1. Section 40-6-233, MCA, is amended to read:

"40-6-233. **Remedy for parental abuse.** The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced. A parent or guardian of a child has the right to give the child or force the child to take prescribed medicine PRESCRIBED FOR THE CHILD, and exercise of the right is not an abuse of parental authority."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. **Definitions.** As used in this chapter, the following definitions apply:

- (1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.
- (2) "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

(3) (a) "Adequate health care" means any medical care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) ~~Nothing in this~~ This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

~~(c) The term does not include what appears to be an extreme reaction to extreme circumstances, such as self defense or defense of others, OR action taken to prevent the child from self harm, or normal physical punishment or normal physical consequences of one's actions THAT DOES NOT CONSTITUTE HARM TO A CHILD'S HEALTH OR WELFARE.~~

(6) "Department" means the department of family services provided for in 2-15-2401.

(7) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody and whose legal custody has been transferred to a licensed agency.

(8) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

- (b) commits or allows to be committed sexual abuse or exploitation of the child;
- (c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, ~~shelter~~, SHELTER, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;
- (d) abandons the child by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or
- (e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.
- (9) "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.
- (10) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.
- (11) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.
- (12) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.
- (13) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.
- (14) "Social worker" means an employee of the department whose duties generally involve the provision of either child or adult protective services, or both.
- (15) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.
- (16) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment ~~including~~ appropriate nutrition, hydration, and

- medication₂ that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions. However, the term does not include the failure to provide treatment ~~to~~ other than appropriate nutrition, hydration, or medication₂ to an infant when, in the treating physician's or physicians' reasonable medical judgment:
- (a) the infant is chronically and irreversibly comatose;
 - (b) the provision of treatment would:
 - (i) merely prolong dying;
 - (ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or
 - (iii) otherwise be futile in terms of the survival of the infant; or
 - (c) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.
- (17) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."
- Section 3.** Section 41-5-102, MCA, is amended to read:
- "41-5-102. Declaration of purpose.** The Montana Youth Court Act ~~shall~~ must be interpreted and construed to effectuate the following express legislative purposes:
- (1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;
 - (2) to ~~remove from youth committing violations of the law the element of retribution and to substitute therefor prevent and reduce youth delinquency through immediate, consistent, enforceable, and avoidable consequences of youths' actions and to establish~~ a program of supervision, care, rehabilitation, detention, COMPETENCY DEVELOPMENT, COMMUNITY PROTECTION, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of subsections (1) and (2) ~~of this section~~ in a family environment whenever possible, separating the youth from ~~his~~ the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights."

Section 2. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Commit" means to transfer to legal custody.

(4) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(5) "Court", when used without further qualification, means the youth court of the district court.

(6) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(7) "Delinquent youth" means a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(8) "Department" means the department of family services provided for in 2-15-2401.

(9) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of his case.

(10) "Detention facility" means a shelter care facility or a physically restricting facility designed to prevent a youth from departing at will and approved by the board of county commissioners of the county

in which the facility is located. The term includes a youth detention facility, short term detention center, and regional detention facility.

(11) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-523.

(12) "Foster home" means a private residence licensed by the department for placement of a youth.

(13) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(14) "Holdover" means a room, office, building, or other place approved by the board of crime control county commissioners of the county in which the holdover is located for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(15) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults ~~for arrest~~.

(16) "Judge", when used without further qualification, means the judge of the youth court.

(17) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his the rights and duties as guardian unless otherwise authorized by the court entering the order.

(18) "Necessary parties" includes the youth, his and the youth's parents, guardian, custodian, or spouse.

(19) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(20) "Probable cause hearing" means the hearing provided for in 41-5-303.

~~(21) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-311, and approved by the board of county commissioners of each county.~~

~~(22) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to an informal adjustment, consent decree, or other youth court order.~~

~~(23) "Secure detention facility" means any public or private facility that is approved by the board of county commissioners of the county in which it is located and that:~~

~~(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses; and~~

~~(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.~~

~~(24) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against or property, or an offense involving dangerous drugs.~~

~~(25) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.~~

~~(26) "Shelter care facility" means a facility approved by the board of county commissioners of the county in which it is located and used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-306(1).~~

~~(27) "Short-term detention center" means a detention facility licensed by the department approved by the board of county commissioners of the county in which the detention center is located for the temporary placement or care of youth, for a period not to exceed 96 hours, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility or shelter care facility.~~

~~(28) "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills school in Miles City and the Mountain View school in Helena.~~

~~(29) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardian.~~

~~(30) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.~~

~~(31) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court judge and probation officers.~~

~~(32) "Youth detention facility" means a secure detention facility licensed by the department approved by the board of county commissioners of the county in which the detention facility is located for the temporary substitute care of youth that:~~

~~(a) is operated, administered, and staffed separately and independently of a jail; and~~

~~(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth.~~

~~(33) "Youth in need of care" has the meaning provided for in 41-2-102.~~

~~(34) "Youth in need of supervision" means a youth who commits an offense prohibited by law that, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:~~

~~(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;~~

~~(b) continues to exhibit behavior beyond the control of his the youth's parents, foster parents, physical custodian, or guardian despite the attempt of his the parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or~~

~~(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of supervision."~~

Section 9. Section 41-5-203, MCA, is amended to read:

"41-5-203. Jurisdiction of the court courts. (1) Except as provided in subsection (2), the The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city, and district courts have concurrent jurisdiction with the youth court over all alcoholic beverage and gambling violations alleged to have been committed by a youth a person under 21 years of age who is charged with a violation of any state criminal or other law or municipal

~~ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them jurisdiction over the violation charged."~~

Section 10. Section 41-5-204, MCA, is amended to read:

"41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. The youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of supervision or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

- (a) the county in which the youth is apprehended or found;
- (b) the county in which the youth is alleged to have violated the law; or
- (c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of supervision or a youth in need of care, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred."

Section 11. Section 41-5-205, MCA, is amended to read:

"41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

- (1) at the time the proceedings are transferred to adult criminal court;
- (2) ~~(1)~~ at the time the youth is discharged by the department; and
- (2) ~~at the time the youth is transferred to the department of corrections and human services; and~~
- (3) in any event, at the time the youth reaches the age of 21 years."

Section 12. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-603, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (A) negligent homicide as defined in 45-5-104;
- (B) arson as defined in 45-6-103;
- (C) aggravated or felony assault as defined in 45-5-202;
- (D) robbery as defined in 45-5-401;
- (E) burglary or aggravated burglary as defined in 45-5-204;
- (F) aggravated kidnapping as defined in 45-5-302;
- (G) possession of explosives as defined in 45-8-335;
- (H) criminal sale of dangerous drugs as defined in 45-9-101;
- (I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A)

through (1)(a)(iii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

- (i) the youth committed the delinquent act alleged;
- (ii) the seriousness of the offense and the protection of the community require treatment of the

youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner;

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute is deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a

state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(1) (a) A youth's first violation of a state criminal or other law or municipal ordinance may be handled by the probation officer under part 4 of this chapter or the probation officer may refer the youth to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other appropriate proceeding in a court having jurisdiction over the violation. The youth must be tried as an adult.

(b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or other proceeding as provided in subsection (1)(a).

(9)(2) A youth whose case is transferred to district court who is charged with a crime may not be detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition of his the case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 13. Section 41-5-301, MCA, is amended to read:

"41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof of an order, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall must be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such ~~the~~ detention or shelter care should be continued based upon criteria set forth in 41-5-205.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his ~~the youth's~~ parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation, or detention, treatment, or a placement;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such ~~the~~ treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said ~~the~~ matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney or a youth placement committee, whichever is appropriate; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.

(6) The county attorney may either:

(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by such evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(b) file a complaint or other proceeding under 41-5-206.

(7) A petition, complaint, or other proceeding charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or the petition shall be dismissed and the youth must be released unless good cause is shown to further detain such ~~the~~ youth.

(8) If no ~~a~~ petition, complaint, or other proceeding is ~~not~~ filed under this section, the complainant and victim, if any, shall must be informed by the probation officer of the action and the reasons therefor

~~for the action and shall must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition, complaint, or other proceeding shall be is to be filed."~~

Section 4. Section 41-5-304, MCA, is amended to read:

"41-5-304. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for ~~conduct alleged to be unlawful that would be~~ CONDUCT ALLEGED TO BE UNLAWFUL THAT WOULD BE a felony if committed by an adult IF COMMITTED BY AN ADULT;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged ~~would constitute is~~ a felony if the act had been committed by an adult.

(3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation."

Section 15. Section 41-5-305, MCA, is amended to read:

"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities.

(1) A youth may not be placed in a secure detention facility unless:

(a) ~~he the youth has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;~~

(b) ~~he the youth is alleged to be a delinquent youth and;~~

(i) ~~he the youth has escaped from a shelter care facility, correctional facility, or secure detention facility;~~

(ii) ~~he the youth has violated a valid court order or an aftercare agreement;~~

(iii) ~~his the youth's detention is required to protect persons or property;~~

(iv) ~~he the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;~~

(v) ~~there are not adequate assurances that he the youth will appear for court when required; or~~

(vi) ~~he the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over him; or~~

(c) ~~he the youth has been adjudicated delinquent and is awaiting final disposition of his the case.~~

(2) ~~A youth may not be placed in a shelter care facility unless:~~

(a) ~~the youth and his the youth's family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;~~

(b) ~~the youth needs to be protected from physical or emotional harm;~~

(c) ~~the youth needs to be deterred or prevented from immediate repetition of his the troubling behavior;~~

(d) ~~shelter care is necessary to assess the youth and his the youth's environment;~~

(e) ~~shelter care is necessary to provide adequate time for case planning and disposition; or~~

(f) ~~shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."~~

Section 5. Section 41-5-306, MCA, is amended to read:

"**41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

- (a) in a licensed youth foster home as defined in 41-3-1102;
- (b) in a facility operated by a licensed child welfare agency;
- (c) in a licensed youth group home as defined in 41-3-1102; or OR
- (d) under home arrest, either in the youth's own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10; OR

~~(E) IN A DETENTION FACILITY.~~

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1), must be segregated from juvenile offenders, and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent

youth may be placed only in:

- (a) the facilities described in subsection (1);
- (b) under home arrest as provided in subsection (1);
- (c) a short-term detention center; or
- (d) a youth detention facility; OR
- (E) A COMMUNITY YOUTH COURT PROGRAM."

Section 17. Section 41-5-307, MCA, is amended to read:

~~"41-5-307. Release or delivery from custody.~~ (1) ~~Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.~~

(2) ~~Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his the reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention approved by the youth court board of county commissioners. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his the reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court board of county commissioners."~~

Section 18. Section 41-5-313, MCA, is amended to read:

~~"41-5-313. Permitted acts — detention of youth in law enforcement facilities — criteria.~~ (1) ~~Nothing in this chapter precludes does not include PRECLUDE the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:~~

- (a) ~~the area where the youth is held is an unlocked, multi-purpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing,~~

1 such as a booking room;

2 (b) the youth is not secured to a cuffing rail or other stationary object during the period of
3 detention;

4 (c) use of the area is limited to ensuring custody of the youth for the purpose of identification,
5 processing, or transfer of the youth to an appropriate detention or shelter care facility;

6 (d) the area is not designed or intended to be used for residential purposes; and

7 (e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff
8 during the period of time that the youth is held in detention.

9 (2) For purposes of this section, "secure detention" means the detention of youth or confinement
10 of adults accused or convicted of criminal offenses in a physically restricting setting, including but not
11 limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at
12 will."

13
14 **Section 19.** Section 41-5-401, MCA, is amended to read:

15 **"41-5-401. Consent adjustment without petition.** (1) Before a petition is filed, the probation
16 officer may enter into an informal adjustment and give counsel and advice to the youth and other interested
17 parties if it appears:

18 (a) the admitted facts bring the case within the jurisdiction of the court;

19 (b) counsel and advice without filing a petition would be in the best interests of the child youth,
20 the youth's family, and the public; and

21 (c) the youth may be a youth in need of supervision and if the probation officer believes that the
22 parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve,
23 or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the
24 parents, foster parents, physical custodian, or guardian.

25 (2) Any probation or other disposition imposed under this section against any youth must conform
26 to the following procedures:

27 (a) Every consent adjustment shall ~~must~~ be reduced to writing and signed by the youth and his ~~the~~
28 ~~youth's~~ parents or the person having legal custody of the youth.

29 (b) If the probation officer believes the youth is a youth in need of supervision, the probation officer
30 shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable

1 efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior
2 beyond the control of the parents, foster parents, physical custodian, or guardian.

3 (c) Approval by the youth court judge is required if the complaint alleges commission of a felony
4 or if the youth has been or will be in any way detained.

5 (d) ~~If a placement of the youth is made, it must be by the youth placement committee pursuant~~
6 ~~to 41-5-526 and 41-5-527."~~

7
8 **Section 6.** Section 41-5-403, MCA, is amended to read:

9 **"41-5-403. Disposition permitted under informal adjustment -- contributions by parents or guardians**
10 **for youth's care.** (1) The following dispositions may be imposed by informal adjustment:

11 (a) probation;

12 (b) placement of the youth in substitute care in a youth care facility, as defined in 41-3-1102, and
13 as determined by the department;

14 (c) placement of the youth with a private agency responsible for the care and rehabilitation of the
15 youth as determined by the department;

16 (d) restitution upon approval of the youth court judge;

17 (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10.

18 (2) In determining whether restitution is appropriate in a particular case, the following factors may
19 be considered in addition to any other evidence:

20 (a) age of the youth;

21 (b) ability of the youth to pay;

22 (c) ability of ~~the parents or legal guardian~~ **THE PARENTS, LEGAL GUARDIAN, OR persons**
23 **contributing to the youth's delinquency or need for supervision** to pay;

24 (d) amount of damage to the victim; and

25 (e) legal remedies of the victim; ~~however~~ **However**, the ability of the victim or his ~~the victim's~~
26 insurer to stand any loss may not be considered in any case.

27 (3) If the youth violates an aftercare agreement as provided for in 52-5-126, ~~he~~ **the youth** must
28 be returned to the court for further disposition. A youth may not be placed in a state youth correctional
29 facility under informal adjustment.

30 (4) If the youth is placed in substitute care requiring payment by the department, the court shall

examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(5) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (4), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(6) (a) Except as provided in subsection (6)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(7) (a) If the court orders the payment of contributions under this section, the department shall

apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 7. Section 41-5-514, MCA, is amended to read:

"41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence; and

(4) UPON A FINDING OF AN OFFENSE RELATED TO USE OF ALCOHOL OR ILLEGAL DRUGS, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

~~**Section 22.** Section 41-5-521, MCA, is amended to read:~~

~~**"41-5-521. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his or the youth's parent, guardian, or attorney may demand a jury trial on such the contested offenses. In the absence of such a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall must be set immediately and accorded a preferential priority.~~

~~(2) An adjudicatory hearing shall must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in~~

~~need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The petition and affidavits may not contain allegations against PERSONS OTHER THAN the youth or other persons unless they have been admitted or proven.~~

~~(3) An adjudicatory hearing shall must be recorded verbatim by whatever means the court considers appropriate.~~

~~(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.~~

~~(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.~~

~~(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.~~

~~(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47."~~

Section 8. Section 41-5-522, MCA, is amended to read:

"41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of care, commitment, and treatment of the youth as required in 41-5-523.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, ~~his~~ the youth's family, ~~his~~ the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall must be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the

court. The results of ~~such~~ the examination shall must be included in the social summary or predisposition report. The youth, ~~his~~ or the youth's parents, guardian, or counsel shall ~~have~~ has the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall ~~have~~ has the right to cross-examine ~~said~~ the parties at the dispositional hearing.

(3) Defense counsel shall must be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall must be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. ~~Such~~ The evidence shall must include but ~~is~~ is not be limited to the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, ~~his~~ or the youth's parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ~~ability of the parents or legal guardian~~ THE PARENTS, LEGAL GUARDIAN, OR those that contributed to the youth's delinquency or need for supervision to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim; ~~however~~ However, the ability of the victim or ~~his~~ the victim's insurer to stand any loss may not be considered in any case."

Section 24. Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition — commitment to department — placement and evaluation of youth — restrictions. (1) ~~If Except as provided in subsection (15), if a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:~~

~~(a) place the youth on probation;~~

~~(b) commit the youth to the department if the court determines that the youth is in need of~~

placement in other than the youth's own home, provided that:

(i) ~~the court shall determine whether continuation in the home would be contrary to the welfare of the youth, the youth's family, and the community and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.~~

(ii) ~~in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.~~

(c) ~~order restitution by the youth or the youth's parents;~~

(d) ~~impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;~~

(e) ~~require the performance of community service;~~

(f) ~~require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;~~

(g) ~~require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;~~

(h) ~~require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;~~

(i) ~~order further care, treatment, evaluation, or relief that the court considers beneficial to the youth, the youth's family, and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.~~

(j) ~~commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state~~

youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill to have a mental disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or unable to conform the youth's behavior to the requirements of law after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(k) ~~place the youth under home arrest as provided in Title 46, chapter 18, part 10.~~

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this This section limits does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) ~~(b)~~ A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-206 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) ~~case management of the youth.~~

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an a violent felony offense that is transferable to criminal court under 41-5-206 as defined in 46-18-1001.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is

nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(15) (a) A misdemeanor counts as one point and a felony counts as three points. An offense that can be committed only by a person only because of age counts as one point. A youth found to have accumulated three points must be placed in a secure detention facility for 1 week. Upon accumulating six

~~points, a youth must be placed in a secure detention facility for 2 weeks 5 DAYS, and upon accumulating five points, a youth must be placed in a secure detention facility for 30-40 days. The staff of the secure detention facility must be trained in and give the youth counseling. The youth must be segregated from other youth, except when working on public works projects. Each county shall establish public works projects for the youth.~~

~~(b) Upon accumulating 10 points, a youth must be designated as a "habitual offender" and must be placed in a state youth correctional facility for no less than 90 days.~~

~~(c) If the court finds that a habitual offender commonly entices or assists other youth to perform illegal acts, the youth must be designated as a "predatory youth" and must be placed in a state youth correctional facility for no less than 180 days.~~

~~(d) Law enforcement, educational, and social service agencies, the court, and other agencies and entities involved with a youth who is found by the court or believed by the agency or entity to be a delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for the county in which the youth resides with any information in the possession of the agency or entity that may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.~~

~~(15) If a youth who is serving time in a state youth correctional facility because the youth was found to be a habitual offender or a predatory youth needs and is willing to accept treatment for mental, emotional, behavioral, substance abuse, or similar problems, the youth may be transferred to a residential treatment facility, but not until after the youth has served at least one half of the imposed detention period.~~

~~(17) Health, education, welfare, and other agencies involved with the youth shall ensure that funding for the youth follows the youth to the location in which the youth is placed and that the funding is assigned to the appropriate agency or entity.~~

~~(18) Before a youth is released from a state youth correctional facility, the department shall adopt and the court shall approve a written supervision plan.~~

~~(19) (a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over the youth is transferred to the department of corrections and human services, which shall make an appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.~~

~~(b) When a youth is transferred to the department of corrections and human services, the department of family services shall transmit to the department of corrections and human services the dispositional judgment, copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.~~

~~(c) The department of corrections and human services shall confine the youth in whatever institution it considers proper, including a youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison."~~

Section 25. Section 41-5-526, MCA, is amended to read:

"41-5-526. Duties of the youth placement committee. A youth placement committee shall:

~~(1) review all information relevant to the placement of a youth referred or committed to the department;~~

~~(2) consider available resources appropriate to meet the needs of the youth;~~

~~(3) consider the treatment recommendations of any professional person who has evaluated the youth;~~

~~(4) recommend in writing to the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility approved by the board of county commissioners of the county in which the facility is located, at Mountain View school, at Pine Hills school, or with a parent, other family member, or guardian.~~

~~(5) review temporary and emergency placements as required under 41-5-528; and~~

~~(6) conduct placement reviews as requested by the department."~~

Section 26. Section 41-5-527, MCA, is amended to read:

"41-5-527. Youth placement committee to submit recommendation to department—acceptance or rejection of recommendation by department. (1) When a youth has been referred or committed to the department for placement, the department shall notify the appropriate youth placement committee. The committee shall submit in writing to the department its recommendation for placement of the youth. The committee shall send a copy of the recommendation to the appropriate youth court judge.

~~(2) If Except as provided in subsection (7), if the department accepts the committee's~~

1 recommendation, the youth must be placed according to the recommendation.

2 (3) If the department rejects the committee's recommendation, it shall promptly notify the
3 committee in writing of the reasons for rejecting the recommendation. The department shall send a copy
4 of the notice to the appropriate youth court judge.

5 (4) After receiving a notice under subsection (3), the committee shall submit in writing to the
6 department a recommendation for an alternative placement of the youth.

7 (5) If ~~Except as provided in subsection (7), if~~ the department accepts the committee's
8 recommendation for alternative placement, the youth must be placed according to the recommendation.

9 (6) If the department rejects the committee's recommendation for alternative placement, the
10 department shall promptly notify the committee in writing of the reasons for rejecting the recommendation
11 and shall determine an appropriate placement for the youth. The youth must be placed as determined by
12 the department.

13 (7) A placement may not be made unless the youth court judge agrees with the placement.

14
15 Section 27. Section 41-5-520, MCA, is amended to read:

16 "41-5-520. Confidentiality of youth placement committee meetings and records. (1) Meetings of
17 a youth placement committee are closed to the public to protect a youth's right to individual privacy.

18 (2) Information presented to the committee about a youth and committee records are confidential
19 and subject to confidentiality requirements established by rule by the department. Purposeful violation of
20 the confidentiality requirements is a criminal offense and a person convicted of violating the requirements
21 shall be fined \$1,000."

22
23 Section 28. Section 41-5-533, MCA, is amended to read:

24 "41-5-533. Probation revocation disposition. (1) ~~A Prior to the youth's transfer to the~~
25 ~~department of corrections and human services, a youth on probation incident to an adjudication that he the~~
26 ~~youth is a delinquent youth or a youth in need of supervision and who violates a term of such the probation~~
27 ~~may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall~~
28 ~~must be done by filing in the original proceeding a petition styled "petition to revoke probation".~~

29 (2) ~~Petitions to revoke probation shall must be screened, reviewed, and prepared in the same~~
30 ~~manner and shall must contain the same information as petitions alleging delinquency or need of~~

1 supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall
2 apply. The petition shall must state the terms of probation alleged to have been violated and the factual
3 basis for such the allegations.

4 (3) ~~The standard of proof in probation revocation proceedings is the same standard used in~~
5 ~~probation revocation of an adult and the hearing shall must be before the youth court without a jury. In~~
6 ~~all other respects proceedings to revoke probation are governed by the procedures, rights, and duties~~
7 ~~applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of~~
8 ~~supervision. If a youth is found to have violated a term of his probation, the youth court may make any~~
9 ~~judgment of disposition that could have been made in the original case."~~

10
11 Section 29. Section 41-5-601, MCA, is amended to read:

12 "41-5-601. Confidentiality. (1) ~~(a) No Except as provided in subsection (1)(b), information shall~~
13 ~~may not be given concerning a youth or any matter or proceeding in the youth court involving a youth~~
14 ~~proceeded against as, or found to be, a youth in need of supervision.~~

15 ~~(b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster~~
16 ~~care, the court shall notify the school that the youth will attend of the issues and the school may refuse~~
17 ~~to accept the youth as a student.~~

18 (2) ~~When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth~~
19 ~~formally charged with or proceeded against as or found to be a delinquent youth as a result of the~~
20 ~~commission of any offense that would be punishable as a felony if the youth were an adult. All court~~
21 ~~proceedings must be open to the public with the exception of the transfer hearing specified in 41-5-206~~
22 ~~if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair~~
23 ~~trial.~~

24 (3) ~~In all cases the victim is entitled to all information concerning the identity and disposition of the~~
25 ~~youth.~~

26 (4) ~~The identity of any a youth who for the second or subsequent time admits violating or is~~
27 ~~adjudicated as having violated 45-5-624 or 45-9-102 may a statute must be disclosed by youth court~~
28 ~~officials to the administrative officials of the school in which the youth is a student for purposes of referral~~
29 ~~for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed~~
30 ~~at the time of the admission or adjudication. The information may not be further disclosed and may not be~~

made part of the student's permanent records."

Section 9. Section 41-5-604, MCA, is amended to read:

"41-5-604. Disposition of records. (1) All youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under this chapter shall must be physically sealed when the youth reaches the age of 18 years 3 years after supervision for an offense ends. The records must MAY be unsealed if a new offense is committed.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files shall must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records ~~se~~ that are sealed shall also seal or destroy ~~such the~~ copies of records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall may~~ not apply to youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-601."

Section 31. Section 41-5-703, MCA, is amended to read:

"41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his ~~the officer's~~ supervision;

The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not placed in a detention center or facility complies with the orders of the court;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to ~~may~~ make arrests or to ~~and~~ perform any other law enforcement functions function in carrying out his ~~the officer's~~ duties, except that a probation officer may take including taking into custody any a youth who violates either his probation or a lawful order of the

court."

Section 10. Section 41-5-802, MCA, is amended to read:

"41-5-802. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility ~~must be physically unrestricted and~~ may be used to provide shelter care AN APPROPRIATELY PHYSICALLY RESTRICTING SETTING for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(3) A shelter care facility must be ~~separate and apart~~ physically separated from any facility housing adults accused or convicted of criminal offenses.

(4) State appropriations and federal funds may be received by the counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(5) A shelter care facility must be furnished in a comfortable manner ~~and be as nearly as possible~~ like a family home.

(6) A shelter care facility may be operated in conjunction with a youth detention facility."

Section 33. Section 41-5-810, MCA, is amended to read:

"41-5-810. County responsibility to provide youth detention services. (1) ~~Each county shall provide services for the detention of youth in facilities separate from adult jails and space must be found for a youth in need of detention. A youth may not be released from detention because of space problems. An arresting officer shall place the youth in a detention center.~~

(2) ~~In order to fulfill its responsibility under subsection (1), a county may:~~

(a) establish, operate, and maintain a holdover, a short term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate,

~~or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

~~(3) Each county, or regional, municipal, or state detention facility of any type, detention center of any type, shelter care facility, or holdover must be licensed approved by the department in accordance with rules adopted under 41-5-800 board of county commissioners of the county in which it is located."~~

Section 11. Section 41-5-811, MCA, is amended to read:

"41-5-811. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-810 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility ~~must be for a term of not less than 10 years. In addition, the contracts must:~~

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility;

(d) include the applicable per diem charge for the detention of youths in the facility, as well as the basis for any adjustment in the charge; and

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility."

Section 35. Section 41-5-812, MCA, is amended to read:

"41-5-812. Creation of regions ~~requirements~~ limitation on number of regions. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

(a) be composed of contiguous counties participating in the regional detention facility; and

(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.

(3) ~~There may be no more than five youth detention regions established in the state at any one time."~~

Section 36. Section 41-5-1001, MCA, is amended to read:

"41-5-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricted setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-812.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his the youth's case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1002.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1002."

Section 37. Section 41-5-1004, MCA, is amended to read:

"41-5-1004. Distribution of grants ~~limitation of funding~~ restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that will be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) ~~in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or~~

(b) ~~on a matching basis in an amount not to exceed:~~

(i) ~~75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care must be paid as provided by law.~~

(ii) ~~50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.~~

(3) ~~Grants under 41-5-1002 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-523."~~

Section 38. ~~Section 52-5-129, MCA, is amended to read:~~

~~"52-5-129. Hearing on alleged violation of aftercare agreement — right to appeal outcome. (1)~~

~~When it is alleged by an aftercare counselor that a youth has violated the terms of his an aftercare agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he the youth should be returned to the youth correctional facility from which he the youth was released or a different plan for treatment should be pursued by the department of family services.~~

~~(2) The youth, upon advice of an attorney, may waive his the right to a hearing.~~

~~(3) With regard to this hearing, the youth must be given:~~

~~(a) written notice of the alleged violation of his an aftercare agreement, including notice of the purpose of the hearing;~~

~~(b) disclosure of the evidence against him the youth and the facts constituting the alleged violation;~~

~~(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him the youth and to show that there are compelling reasons that justify or mitigate the violation;~~

~~(d) opportunity to have the referee subpoena witnesses;~~

~~(e) the right to confront and cross-examine adverse witnesses;~~

~~(f) the right to be represented by an attorney;~~

(g) ~~a record of the hearing; and~~

(h) ~~notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.~~

(4) ~~The department shall appoint a referee, who may not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.~~

(5) ~~If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he the referee shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.~~

(6) ~~The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.~~

(7) ~~Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he when the youth may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of his an aftercare agreement are as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.~~

(8) ~~If the decision is made to return the youth to the youth correctional facility from which he the youth was released and the youth appeals that decision, he the youth shall await the outcome of the appeal at the facility."~~

Section 38. ~~Section 52-21-162, MCA, is amended to read:~~

~~"52-21-162. Establishment of patient treatment plan — patient's rights. (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and~~

1 review of behavioral status within 48 hours after admission to the mental health facility.

2 (2) Each patient must have an individualized treatment plan. This plan must be developed by

3 appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days

4 after the patient's admission. Each individualized treatment plan must contain:

5 (a) a statement of the nature of the specific problems and specific needs of the patient;

6 (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of

7 hospitalization;

8 (c) a description of treatment goals, with a projected timetable for their attainment;

9 (d) a statement and rationale for the plan of treatment for achieving these goals;

10 (e) a specification of staff responsibility for attaining each treatment goal;

11 (f) criteria for release to less restrictive treatment conditions; and

12 (g) a notation of any therapeutic tasks and labor to be performed by the patient.

13 (3) Overall development, implementation, and supervision of the treatment plan must be assigned

14 to an appropriate professional person.

15 (4) The inpatient mental health facility shall periodically reevaluate the patient and revise the

16 individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan

17 must be reviewed:

18 (a) at the time of any transfer within the facility;

19 (b) at the time of discharge;

20 (c) upon any major change in the patient's condition;

21 (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of

22 stay;

23 (e) no less than every 90 days; and

24 (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that

25 includes at least one professional person who is not primarily responsible for the patient's treatment plan.

26 (5) A patient has the right:

27 (a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning

28 of mental health services to be provided and in the revision of the plan; and

29 (b) to a reasonable explanation of the following, in terms and language appropriate to the patient's

30 condition and ability to understand:

1 (i) the patient's general mental condition and, if given a physical examination, the patient's physical

2 condition;

3 (ii) the objectives of treatment;

4 (iii) the nature and significant possible adverse effects of recommended treatments;

5 (iv) the reasons why a particular treatment is considered appropriate;

6 (v) the reasons why access to certain visitors may not be appropriate; and

7 (vi) any appropriate and available alternative treatments, services, or providers of mental health

8 services; and

9 (c) not to receive treatment established pursuant to the treatment plan in the absence of the

10 patient's informed, voluntary, and written consent to the treatment, except treatment:

11 (i) during an emergency situation if the treatment is pursuant to or documented contemporaneously

12 by the written order of a responsible mental health professional; or

13 (ii) permitted under the applicable law in the case of a person committed to a facility by a court.

14 (6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment

15 described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed

16 pursuant to the provisions of Title 72, chapter 5.

17 (7) The department shall develop procedures for initiating limited guardianship proceedings in the

18 case of a patient who appears to lack the capacity to exercise the right to consent described in subsection

19 (5)(c)."

21 **Section 40.** Section 53-21-506, MCA, is amended to read:

22 **"53-21-506. No commitment to Montana state hospital.** An individual less than 18 years of age

23 may not be voluntarily admitted or committed by a court to the Montana state hospital unless such the

24 individual is transferred to district court charged with a criminal offense pursuant to 41-5-206."

26 **NEW SECTION. Section 41. Repealer.** Sections 41-5-106, 41-5-310, 41-5-311, and 41-5-809,

27 MCA, are repealed.

28 -END-